REPORT I

# International Labour Conference

NINETEENTH SESSION
GENEVA, 1935

# Maintenance of Rights in course of acquisition and Acquired Rights under Invalidity, Old-age and Widows' and Orphans' Insurance on behalf of Workers who Transfer their Residence from one Country to Another

First Item on the Agenda

GENEVA
International Labour Office

1935

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GENEVA, SWITZERLAND

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# INTRODUCTION

The question of the maintenance of acquired rights and rights in course of acquisition under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another came up for first discussion at the Eighteenth (1934) Session of the International Labour Conference After examination of a Grey Report prepared by the International Labour Office and containing an analysis of the provisions of national legislation or treaties concluded between certain States for the purpose of regulating the maintenance of migrant workers' rights, the Conference decided to place this question on the Agenda of its next (1935) Session for a second discussion, and at the same time settled the points on which the Governments should be consulted beforehand in accordance with the Standing Orders On the basis of these decisions of the Eighteenth Session of the Conference, the Office drew up a Questionnaire which was circulated in July 1934 to the Governments of the States Members of the International Labour Organisation, inviting them to express their views concerning the form and content of the regulations to be adopted

The present Report has been prepared on the basis of the results of this consultation. Chapter I reproduces the replies of the Governments to the Questionnaire, Chapter II contains a comparative analysis of these replies and Chapter III sets out the conclusions drawn therefrom by the International Labour Office upon which it has based the proposals that it submits to the Conference as a basis of discussion with a view to the final decision to be taken at its Nineteenth Session

Although the Office, in order to enable it to prepare and despatch the present Report within the desired time, had requested the Governments to furnish their replies to the Questionnaire by 10 November 1934, in the case of European States, and by 30 November 1934, in the case of States out-

side Europe, a considerable number of replies was not received until January and even February By 28 February 1935, the date on which this Report was closed for the purpose of including replies to the Questionnaire, the Office had received replies from the Governments of the following 29 States. Australia, Austria, Belgium, Brazil, Bulgaria, Chile, China, Denmark, Esthonia, Finland, France, Great Britain, Hungary, India, Iraq, Irish Free State, Italy, Japan, Lithuania, Luxemburg, Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland, Union of South Africa, Yugoslavia

Should any further replies be received by the Office they will appear in a supplementary report.

Geneva, *March 1935.*

# CHAPTER I

## REPLIES OF THE GOVERNMENTS

A certain number of Governments have felt that they had not sufficient experience in the matter of invalidity, old-age and widows' and orphans' insurance to enable them to furnish useful replies to the various points of the Questionnaire, and others have confined themselves to a general statement of their attitude The replies of these Governments, arranged in the alphabetical order of the countries, are reproduced below.

### AUSTRALIA

There is no insurance or contributory scheme in regard to invalidity, old-age, widows' or orphans' insurance in force under the laws of the Commonwealth The payment of invalid and old-age pensions in Australia is governed by the Invalid and Old-Age Pensions Act 1908-1933 This Act does not confer upon any person the right to a pension The grant is purely gratuitous and is subject to a discretion on the part of the granting authority The Government of the Commonwealth of Australia, therefore, does not consider itself in a position to furnish definite replies to the Questionnaire

### DENMARK

*Establishment of International Scheme* (Part I, Question 1)

See the replies to Parts II and III

*Maintenance of Rights in Course of Acquisition* (Part II, Questions 2 to 25)

As the legislation of Denmark concerning old-age and widows' and orphans' pensions is on a non-contributory basis, the question of "rights in course of acquisition" does not arise, and as the Danish invalidity insurance cannot be said, strictly speaking, to be based on *compulsory* insurance, the Government has not had the opportunity of acquiring sufficient experience to be able to reply to the questions in this Part of the Questionnaire See the reply of the Danish Government to the Questionnaire of 1932 concerning invalidity, old-age and widows' and orphans' insurance (Questions 2-57)

*Maintenance of Acquired Rights* (Part III, Questions 26-34).

Under Danish legislation it is an indispensable condition of the payment of invalidity and old-age pensions that the person concerned, in addition to being a member of a sickness insurance fund, paying

his contributions, and fulfilling the conditions as to character, etc, should be resident in Denmark and be of Danish nationality, and these conditions can be waived by the Government only in virtue of treaties of reciprocity entered into with other States In the case of widows' and orphans' pensions, one of the conditions of payment is that the widow, or at any rate the orphan, should be of Danish nationality or be assimilated to a Danish national, or be covered by a treaty relating to the payment of benefits of this kind, and in addition that the widow should be resident in Denmark and that the orphan should have his principal domicile in the country. The Government is of opinion that exceptions to the condition as to domicile might conceivably be made in accordance with treaties of reciprocity concluded with particular countries. Such treaties, however, could hardly be entered into unless the need for them had revealed itself in practice and then only if a careful examination of the circumstances showed them to be desirable It would hardly be possible to undertake a general obligation by adhering to a general international convention See the reply of the Danish Government to the Questionnaire of 1932 (Questions 93-97)

*Mutual Assistance in Administration* (Part IV, Questions 35-40) *and Operation of International Scheme* (Part V, Questions 41-50)

Since these matters would have to be settled, so far as Denmark is concerned, by treaties of reciprocity with particular countries (see the reply to Part III), it is hardly necessary to reply to the various questions raised in Parts IV and V

## Estonia

As there is no system of invalidity, old-age or widows' and orphans' insurance in operation in Estonia the question of the maintenance of rights acquired or in course of acquisition under such insurance has never arisen In the absence of any practical experience in the matter it would be very difficult for the Government to express an opinion on the utility or practicability of any of the measures indicated in the Questionnaire or to put forward any proposals

For these reasons the Government abstains from replying to the Questionnaire

## Finland

General schemes of invalidity, old-age and widows' and orphans' insurance are at present in full operation only in a few countries This form of insurance does not exist in Finland, nor does there seem to be any possibility of its being introduced in the near future For this reason, the Government of Finland, at the time when the Draft Conventions adopted by the International Labour Conference in 1933 were in course of preparation, was of opinion that the proposed international regulations on this subject should not take the form of a Draft Convention, but should be given the form of a Recommendation giving the appropriate rules and arrangements for the organisation of invalidity, old-age and widows' and orphans' insurance

Having regard to the attitude it took up towards the proposed Draft Convention concerning invalidity, old-age, and widows' and orphans' insurance, the Government does not consider that the Conference should adopt a Draft Convention in the present case, which concerns only one feature of the insurance scheme, but proposes instead the adoption of an international Recommendation concerning the maintenance of rights in course of acquisition and acquired rights under invalidity, old-age, and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another When a sufficient degree of uniformity had been secured by means of treaties concluded between particular countries on the basis of the Recommendation for the purpose of establishing reciprocity, the second step might be taken of adopting an International Convention, which would then be ratified by the majority of countries

The Government is unable to give detailed replies to the various questions in the Questionnaire, since in the absence of a scheme of invalidity, old-age, and widows' and orphans' insurance, it has not the experience required to enable it to suggest solutions to these weighty and difficult problems

## Great Britain

Careful consideration has been given to the Report of the First Discussion by the International Labour Conference and to the Questionnaire prepared by the International Labour Office on the subject

It appears to the Government that for the reasons stated below the circumstances with regard to migrant workers and their position under the British schemes of social insurance are not such as to call for the making of arrangements of the kind contemplated in the Report and Questionnaire

In the first place the volume of migration of insured workers from the United Kingdom to other countries, and *vice versa*, is at the present time of very small dimensions The main consideration, however, which weighs with the Government is that under the British schemes of insurance for invalidity pensions (disablement benefit) and old-age, widows' and orphans' pensions, insured persons become entitled to the maximum rate of pension after completion of very short waiting periods Thus, a worker migrating to the United Kingdom from any other country would qualify for the maximum benefit in respect of invalidity, and the maximum rate of widows' and orphans' pension, after being insurably employed in the United Kingdom for 104 weeks and payment of 104 weekly contributions, and for the maximum rate of old age pension after being employed for five years. A migrant, therefore, would secure the full protection afforded under the British schemes of insurance within a few years after taking up employment in the United Kingdom.

In these circumstances it does not appear to the Government that any useful purpose would be served by an attempt to reply to the detailed questions included in the Questionnaire which are framed on the basis that rates of pension are dependent on duration of insurance, and most of which are entirely inapplicable to the British schemes of insurance

At the same time the Government recognise that the problem covered by the Questionnaire is one of great importance to many European countries having pensions schemes in which the rate of pension is dependent on the duration of insurance, and they do not desire to place any obstacle in the way of the drawing up of a a Convention to regulate the making of arrangements between such countries

### India

The subject to which the Questionnaire relates presupposes the existence of State systems of insurance, and in the absence of any such system in India the Government of India regret that they are unable to furnish any useful reply

### Iraq

As there is no compulsory insurance scheme in being in Iraq, the Government regards the subject as inapplicable to Iraq

### Irish Free State

Whilst the Government recognise that the subject is one of very great importance in European countries, where there is a large number of migrants from one country to another, they feel that the problem is not one in which they themselves would be justified in making any special arrangement, as the number of migrants between European countries (other than Great Britain) and the Irish Free State is negligible The Government mention that in so far as disablement is concerned, reciprocal arrangements have been made with Great Britain under the Health Insurance Acts, whereby the rights of insured workers are maintained on transfer

Under these circumstances the Government are of opinion that no useful purpose would be served by replying in detail to the questions embodied in the Questionnaire

### Japan

There is as yet no system of invalidity, old-age, or widows' and orphans' insurance in Japan for employees in general, though the Government is considering the matter The Government is not in a position to express any views in detail on the Questionnaire, which presupposes the existence of such a system.

### Lithuania

As invalidity, old-age and widows' and orphans' insurance, in the sense of the Questionnaire, does not exist in Lithuania, the Government is not in a position to give replies to the Questionnaire

### New Zealand

The Government has had no experience or actual knowledge of the practical administration of compulsory social insurance of the nature contemplated by the International Labour Office, as

the pensions of the Dominion are "free" grants for "need" cases In the circumstances, therefore, the Government considers that comment would scarcely be of material assistance. The Government adds that from time to time the introduction of a universal pension scheme has been reviewed by the Government of the Dominion, but so far it has not been found possible to proceed with such a comprehensive scheme of social insurance

NORWAY

The Norwegian Government considers it desirable that the International Labour Conference should adopt a Draft Convention on the lines drawn up in the Questionnaire

General insurance schemes of the kind dealt with in the Questionnaire have not yet been introduced in Norway Owing to the lack of experience how legislation of that kind would be operated in the country it is difficult to give detailed replies to the Questionnaire The Government therefore confines itself to giving a general reply as to the desirability of adopting a Draft Convention concerning this subject

SWITZERLAND

The Swiss Federal Law on old-age and widows' and orphans' insurance, which would have brought the whole adult population under compulsory insurance, was rejected on a referendum on 6 December 1931 For this reason, and also because of the economic difficulties of the present time, the institution of these branches of social insurance is impossible for the time being Nevertheless, Article 34 *quater* of the Federal Constitution, which requires the Legislature to establish old-age and widows' and orphans' insurance and, at a later stage, invalidity insuiance, remains in force, and as soon as the economic and financial situation permits effect will have to be given to this provision of the Constitution

At present, the social insurance legislation of the Confederation extends only to sickness insurance and accident insurance, established by the Federal Law of 13 June 1911 In addition, certain cantons have legislated in regard to old-age insurance, invalidity insurance, or widows' and orphans' insurance, their powers in this sphere remaining unrestricted so long as the Confederation does not exercise its constitutional right to legislate

In these circumstances, the Swiss Government is obliged to adopt an attitude of reserve in replying to the Questionnaire framed by the International Labour Conference of 1934 on the maintenance of rights in course of acquisition and rights acquired under old-age, invalidity and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another The circumstances described above have prevented it from acquiring, by means of bilateral agreements, sufficient experience of the matter to enable it to contribute usefully to the elaboration of the proposed scheme

The Government ventures, however, to make the following observations

In the two branches of social insurance which the Confederation has already established, foreigners are accorded liberal treatment Thus, in the case of sickness insurance, foreigners may set

up special funds which are recognised on the same conditions and subsidised on the same basis by the Confederation as other funds, provided that their headquarters are located in Switzerland, and so far as their members are resident in Switzerland The only condition imposed on recognised sickness funds is that they shall not treat Swiss nationals less favourably than foreigners This quite natural and legitimate condition is the only one imposed on them The fact that only Swiss nationals can claim the right to become members of any sickness fund the conditions of membership of which they fulfil does not entail any disadvantage for foreigners, for the numerous recognised sickness funds almost without exception accept them into membership on the same basis as Swiss nationals and, moreover, as has been stated, foreigners can organise their own funds and claim the same Federal subsidies as other funds

As regards accident insurance, since its ratification of the Equality of Treatment (Accident Compensation) Convention, which took effect on 1 February 1929, Switzerland extends to foreigners who suffer an industrial accident, without any restriction, the benefits provided by law, which are very valuable

The same spirit of liberality characterised the provisions of the Federal Law on old-age and widows' and orphans' insurance which was not accepted by the Swiss people This law brought foreigners under insurance as soon as they had acquired a fixed domicile in Switzerland, and on the same basis as Swiss nationals It guaranteed them the same benefits, so far as these were determined by the premiums paid by insured persons It denied them only the State supplements to the insurance benefits, but accorded full equality of treatment in this respect in cases where reciprocity agreements had been concluded Finally, it may be noted that benefits had to be paid in full to dependants resident abroad, whether they were Swiss nationals or not

It is therefore in accordance with Switzerland's traditions and the principles of its existing social insurance legislation that the Government should give its support to the view that a Convention establishing an international scheme for the maintenance of rights under compulsory invalidity, old-age and widows' and orphans' insurance should be framed on a very liberal basis The Government furthermore is able to declare that when legislation on old-age and widows' and orphans' insurance and, at the appropriate time, on invalidity insurance, is again taken in hand in accordance with the requirements of the Constitution, the laws will be adapted as far as possible to conform to the Convention establishing an international scheme for the maintenance of rights

While the Government is not in a position, for the reasons already given, to express an opinion on the technical details of the Draft Convention, it desires nevertheless to state its views on the earlier points of the Questionnaire dealing with the definition of beneficiaries In accordance with the principles so far followed in Swiss legislation, the Government is of opinion that if the Convention is fully to achieve its purpose the widest possible application must be given to its provisions The reply of the Government to Question 3 in particular, and to later questions of the same character, is therefore that the international scheme should apply to all persons irrespective of nationality.

The Conventions on old-age, invalidity and widows' and orphans' insurance adopted by the Conference in 1933 lay down for each of these branches of insurance a series of principles to which the legislation of the ratifying States should conform They are designed to bring about gradually, at any rate in the countries belonging to the International Labour Organisation, a certain uniformity in regard to social insurance As regards foreigners, they require that foreigners should be subject to compulsory insurance in the same way as nationals, and should consequently pay the same contributions and receive the same benefits as nationals, except in respect of supplements payable out of public funds. In this respect only it is laid down — and to this there can be no objection — that the payment of the supplements may be restricted to nationals of States which have ratified the Conventions As regards benefits payable on the basis of the contributions paid by insured persons and their employers, however, these Conventions lay down the only just and reasonable principle, that the same obligations should carry with them the same rights, and that all foreigners should be treated on the same footing as nationals Thus the nationality of the insured person and the ratification of international Conventions by his country of origin do not affect his benefits All that is required is that the foreigner should have been insured and should have paid contributions The application of the Convention now proposed to the nationals of all States, or at any rate of all the States Members of the International Labour Organisation, is therefore merely the logical consequence of the principle of humanity and justice laid down in the Conventions adopted by the Conference in 1933 To limit its application to nationals of States adopting the scheme would be to abandon this principle of equity and to inflict the gravest injustice on the nationals of other States.

Such a limitation would not only be in conflict with the principle that whoever is required to be insured and to pay premiums ought to be able to claim corresponding benefits , it might also work out to the detriment of nationals of States which may be regarded as leaders in matters of social insurance

The Conference of 1933 adopted separate Conventions for the different branches of insurance, in order to enable the greatest possible number of States to adhere, so far as their legislation permitted, to the international scheme by ratifying one or other of these Conventions

In regard to the new Convention on the maintenance of rights in course of acquisition and rights acquired, the question will arise of defining very strictly the conditions upon which a State will be able to adhere to the reciprocal arrangement But what will be the position if a State, in the exercise of the right which the Conference itself recognised in 1933 by deciding on the adoption of separate Conventions, should ratify only one or other of the Conventions of 1933? Would such partial ratification secure for the nationals of the State the advantages provided for by the Convention on the insurance of migrants, even in respect of those branches of social insurance for which there is no ratification ? If so, the nationals of such a State would enjoy a privileged situation without their country of origin having had to take any action On the other hand, should the maintenance of rights in course of acquisition and acquired rights be secured only in respect of those branches of insurance for which

ratification has taken place ? If so, the States which possess a social insurance scheme of great value which cannot be adjusted to meet the requirements of the International Conventions on all the branches of social insurance will not be in a position to obtain for their nationals the advantages of the Convention on the insurance of migrants

These considerations show how difficult it will be to settle the question of admission to the international scheme for the conservation of rights, and how much it is to the advantage of the States, and particularly those which have social insurance schemes of great value, that the nationals of all countries should be able to benefit by the migrants' insurance scheme without any restriction and irrespective of the adoption of the scheme by their States

### Union of South Africa

As the Union of South Africa has found itself unable to ratify the Draft Conventions concerning compulsory invalidity, old-age and widows' and orphans' insurance, and in view of the fact that this country has, with the possible exception of non-contributory old-age pensions to white and coloured persons, had no experience of the problems arising in connection with such compulsory insurance, the Government does not feel justified in attempting to reply categorically to a Questionnaire regarding the maintenance of the rights of migrant workers under such systems

* * *

The observations made on the various points of the Questionnaire by those Governments whose replies arrived in time to be included in the present Report are given below, arranged in the alphabetical order of the countries

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## I — ESTABLISHMENT OF INTERNATIONAL SCHEME

**1. Do you consider it desirable that the International Labour Conference should adopt a Draft Convention providing for the establishment of an international scheme, operative among Members adopting it, to organise under compulsory invalidity, old-age and widows' and orphans' insurance :**

**(a) the maintance of rights in course of acquisition (see II) ;**

**(b) the maintenance of acquired rights (see III) ?**

### Austria

1 *(a)* and *(b)* The replies are in the affirmative

BELGIUM

1 *(a)* and *(b)* The replies are in the affirmative

BRAZIL

1 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

An international scheme for the maintenance of rights is desirable. The Draft Convention should, however, establish a minimum standard If the standard is too high there would be a danger that the Convention would not be accepted or ratified by the countries of immigration, upon whom will fall the heavier part of the cost

BULGARIA

1 *(a)* The reply is in the affirmative

*(b)* Yes, an international scheme for the maintenance of acquired rights is desirable, but the Convention should establish only a minimum standard.

CHILE

1 *(a)* and *(b)* The replies are in the affirmative

CHINA

1 It is desirable that the International Labour Conference should adopt a Draft Convention providing for the establishment of an international scheme, operative among Members adopting it, to organise under compulsory invalidity, old-age and widows' and orphans' insurance ·

*(a)* the maintenance of rights in course of acquisition ,

*(b)* the maintenance of acquired rights

FRANCE

1 *(a)* and *(b)* The reply is in the affirmative provided that the international scheme does not entail the complete assimilation of nationals of all the contracting States

Assimilation should be provided for only in respect of the maintenance of the rights relating to benefits provided by the contributions of the insured person and, possibly, of the employer. It should be left to special diplomatic treaties to effect assimilation of the nationals of the contracting States in respect of benefits derived from State subsidies or other funds, to which a national is entitled under the legislation of his own country

Similarly, it appears desirable that certain questions which cannot be regulated without taking into account the conditions peculiar to each contracting State should be dealt with by special treaties.

### Hungary

The Royal Hungarian Government considers it desirable that the International Labour Conference should adopt a Draft Convention guaranteeing to workers the maintenance of rights in course of acquisition and of acquired rights under invalidity, old-age and widows' and orphans' insurance

The depression in agriculture is extremely severe, and constitutes an obstacle to the establishment of compulsory invalidity, old-age and widows' and orphans' insurance for agricultural workers The following replies therefore relate solely to industrial workers

### Italy

1 It is considered desirable that the International Labour Conference should adopt a Draft Convention providing for the establishment of an international scheme, operative among Members adopting it, to organise under invalidity, old-age and widows' and orphans' insurance

*(a)* the maintenance of rights in course of acquisition ,

*(b)* the maintenance of acquired rights

### Luxemburg

1 It is desirable that the Conference should adopt a Draft Convention providing for the establishment of a scheme for the maintenance *(a)* of rights in course of acquisition and *(b)* of acquired rights under invalidity, old-age and widows' and orphans' insurance

### Netherlands

*Preliminary observation* — The Netherlands Government considers it necessary to preface its replies to the Questionnaire with the following observation

International regulations dealing with the maintenance of rights in course of acquisition and acquired rights under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another would be, in the view of the Government, of considerable advantage to workers Nevertheless, having regard to the considerable differences in the legislation of the various countries, the Government doubts whether it would be possible to frame regulations which could be accepted and applied in practice without imposing too heavy a burden of expenditure on the insurance funds The Government proposes to return to this subject in its replies to the individual questions

1 A Draft Convention would certainly be desirable

### Poland

1. The Government considers it desirable that the Conference should adopt a Draft Convention establishing an international scheme for the maintenance both of rights acquired and of rights

in course of acquisition under invalidity, old-age and widows' and orphans' insurance Such insurance would, to a large extent, fail to achieve its purpose if any considerable number of workers passing from one country to another were condemned in advance, although subject to insurance, to be unable to benefit by it or to be able to benefit by it only within restricted and inadequate limits. It would appear to be somewhat difficult to abolish such a state of affairs by adapting national social insurance legislation to the special position of this class of workers It is therefore indispensable that an international solution of the problem should be found

SPAIN

1. The Government's reply to this Question is in the affirmative It adheres to the opinion it expressed in reply to questions 47 and 49 of the questionnaire drawn up in 1932 in preparation for the Conventions of 1933 on sickness, old-age and widows' and orphans' insurance, its view being that the international regulations would be neither complete nor effective without the further development now under consideration

SWEDEN

*Preliminary observation.* — Swedish legislation on this subject does not deal with widows' and orphans' insurance, and also differs essentially in other respects from that in force in most other countries As the Questionnaire deals for the most part with insurance systems of a quite different character, and as, moreover, Sweden has not concluded any agreements for the purposes under consideration and has no experience of the matter, the Government finds some difficulty in replying to the various questions put

The Swedish Government therefore furnishes the following replies to the Questionnaire, but is obliged, for the reasons given above, to reserve its right to give further consideration to the points of detail raised by the Questionnaire

1 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

YUGOSLAVIA

1 The Government considers it desirable that the International Labour Conference should adopt a Draft Convention providing for the establishment of an international scheme to organise the maintenance of rights in course of acquisition and acquired rights under compulsory invalidity, old-age and widows' and orphans' insurance

The adoption of such a Draft Convention would be unquestionably very opportune Hitherto, the maintenance of rights has been dealt with by means of bilateral agreements between States It has, however, not always been possible to conclude such bilateral agreements and, moreover, they generally deal only with the position of nationals employed on the territory of the two contracting countries, whereas in order to ensure the safeguard and maintenance of rights in course of acquisition or acquired rights in other countries, the collaboration of those countries is necessary

An international Convention on the subject would therefore be very desirable

## II — MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION

### Beneficiaries

**2. Do you consider that, for the purpose of the maintenance of rights in course of acquisition, the international scheme should apply to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme, and to the dependants of such workers ?**

### Austria

2 The reply is in the affirmative.

### Belgium

2 The reply is in the affirmative

### Brazil

2 The reply is in the affirmative

### Bulgaria

2 The reply is in the affirmative

### Chile

2 The international scheme should apply only to insured persons who are nationals of Members that have adopted the scheme, so that States may be induced to adopt it

### China

2 The international scheme should apply to such workers and to their dependants But foreign workers who, owing to the non-establishment of national schemes in their own countries, affiliate in succession to insurance institutions in two or more other State Members adopting the international scheme, should be considered as beneficiaries under the scheme

### France

2 The reply is in the negative , this question should be regulated by special agreements to be concluded between the contracting parties

### Hungary

2 The Government considers it desirable that for the purpose of the maintenance of rights in course of acquisition the international scheme should apply to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme and to dependants of such workers

ITALY

2 The Draft Convention should, for the purpose of the maintenance of rights in course of acquisition, apply to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme and to the dependants of such workers

LUXEMBURG

2 For the purpose of maintaining rights in course of acquisition the scheme to be established should apply to workers affiliated in succession to institutions in two or more States Members adopting the scheme and to the dependants of such workers

NETHERLANDS

2. The international regulations should apply to workers who transfer their residence from one country to another and consequently become subject to the insurance scheme of the second country, and further, to workers who, having transferred their residence, do not come under the operation of the insurance scheme of the second country The regulations should also apply to workers who, without changing their domicile, have changed their employers and as a result have become subject to the insurance scheme of the second country This case arises specially in regard to workers residing in frontier zones

The regulations should also apply to the dependants of such workers

POLAND

2 The reply is in the affirmative.

SPAIN

2- The reply is in the affirmative

SWEDEN

2 The reply is in the affirmative

YUGOSLAVIA

2 The Government considers that for the purpose of maintaining rights in course of acquisition, the international scheme should apply to workers affiliated in succession to insurance institutions in two or more States adopting the scheme and to the dependants of such workers

In view, however, of the fact that systems of non-contributory pensions and systems of insurance strictly so called have been declared equivalent in the Conventions concerning invalidity, old-age and widows' and orphans' insurance, it would be necessary, in order to ensure the protection of workers who spend a certain time in countries which possess a non-contributory pensions scheme, that periods of employment or residence in such countries should

be taken into account in the same way as periods of affiliation to insurance institutions In calculating such periods, it would be desirable to take as a basis the analogy between non-contributory pensions and allowances payable out of public funds under insurance schemes

**3. Further, do you consider that the international scheme should apply :**

**(i) to all persons, irrespective of nationality ?**

**or (ii) only to nationals of Members adopting the scheme ?**

**In the latter case, do you propose also to include among the beneficiaries of the scheme all persons without nationality ?**

AUSTRIA

3 (i) The reply is in the negative

(ii) The reply is in the affirmative. Persons without nationality should not be included

BELGIUM

3. (i) and (ii) The replies are in the affirmative.

BRAZIL

3 The scheme should apply only to nationals of Members adopting the scheme and to persons without nationality.

BULGARIA

3 Only to nationals of Members adopting the scheme (ii), and not to persons without nationality

CHILE

3 The international scheme should apply to all persons, without distinction of nationality, provided that they have become insured in and have had their insurance transferred to countries that have adopted the scheme

CHINA

3 The international scheme should apply to all persons, irrespective of nationality

FRANCE

3 This is a question which should be regulated by special agreements to be concluded between the contracting parties.

## Hungary

3 The international scheme should be based on the principle of equality of treatment, that is to say, each State should undertake to ensure to foreigners and their dependants the same treatment as to its own nationals as regards rights acquired in the country. In the case of international migration by the workers, the advantages of the international scheme should apply to all persons, irrespective of nationality, affiliated to the insurance institutions of the States Members adopting the scheme

If, however, in order to facilitate the ratification of the Convention, the international scheme should have to be limited to nationals of States Members adopting the scheme, the Government considers that the question of persons without nationality should be dealt with specially

It is quite impossible in the case of persons without nationality for their country to ratify the Convention, since in fact they have no country. These workers would therefore be automatically excluded from the international scheme Such an exclusion would not only inflict further hardship upon workers whose conditions of existence are already extremely unfavourable, and thus be in conflict with humanitarian principles, but it could not be reconciled with the principles of the League of Nations as laid down in the Preamble to Part XIII of the Treaty of Trianon and the corresponding Parts of the Treaties of Versailles, St Germain and Neuilly

## Italy

3. It should apply to all workers, irrespective of nationality.

Nevertheless, while this principle may be adopted with respect to the maintenance of rights in course of acquisition which are based on contributions or parts of such contributions payable by the insured persons or their employers, it does not necessarily apply to any portion of the rights in course of acquisition (as in the case of supplements) which may be based on contributions payable out of public funds In the case of the latter, it would seem that the maintenance of rights in course of acquisition should be limited to nationals of States Members adopting the scheme, including persons without nationality coming from such Member States

## Luxemburg

3 The scheme should apply only to nationals of Members adopting the scheme and to persons without nationality

## Netherlands

3. The international scheme should apply only to nationals of States Members who have adopted the scheme and adapted their legislation to conform with it On this basis, it is evident that persons without nationality would not be able to benefit by the scheme

POLAND

3 The Government is in principle in favour of the wider proposal indicated in point *(i)*, but taking the standpoint that the criterion for the application of the scheme for the maintenance of rights should be affiliation of the persons concerned to insurance institutions of countries adopting the scheme and should not be their nationality The application of the scheme for the maintenance of rights in certain cases and the complete non-application of it simply on the ground of the nationality of the person concerned in other cases which are identical from the point of view of insurance, would not be justified and, moreover, might in practice create difficulties for the insurance institutions, especially as they are very often ignorant of the nationality of the persons concerned

SPAIN

3 *(i)* The reply is in the affirmative, but the periods to be taken into account for the purpose of the recognition of rights should be only those spent by the insured person under insurance schemes of countries which have adopted the international scheme This is the condition imposed in the Franco-Spanish Agreement (Article 8, section 1)

*(ii)* In view of the above reply no question arises as to persons without nationality, who should be included among the beneficiaries

SWEDEN

3. The reply is in the affirmative to *(i)* and in the negative to *(ii)*

YUGOSLAVIA

3 The international scheme should apply to all persons irrespective of nationality An exception might perhaps be allowed in the case of nationals of States which possess an insurance or non-contributory pensions scheme but which do not adopt the international scheme Such an exception should not, however, be applied in the case of nationals of States which cannot adopt the international scheme because they do not possess an adequate insurance or non-contributory pensions scheme.

TOTALISATION INSURANCE PERIODS

**4. Do you consider that, for the purpose of maintaining rights in course of acquisition as against each institution concerned, the periods to be totalised should comprise :**

***(a)* contribution periods ;**

***(b)* and also periods in respect of which contributions are not payable but during which rights are maintained,**

either *(i)* **under the law of at least one of the institutions concerned ;**

or *(ii)* only under the law of the institution which is totalising ?

Please state whether you prefer solution *(i)* or solution *(ii)*.

5. Further, do you consider that, for the purpose of maintaining rights in course of acquisition, the periods to be totalised should comprise :

*(a)* periods during which a pension is paid by an invalidity insurance, old-age insurance, or widows' and orphans' insurance, institution of any other Member adopting the international scheme ?

*(b)* and also periods during which a pension or other cash benefit is paid by another branch of social insurance of another Member adopting the scheme in so far as a corresponding pension or other cash benefit, paid under the law of the institution which is totalising, would maintain rights in course of acquisition ?

AUSTRIA

4 *(a)* The reply is in the affirmative

*(b)* *(i)* The reply is in the affirmative, on the understanding that in all cases the national law of that country is applied in which the periods in question were spent

*(ii)* The reply is in the negative

5 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

BELGIUM

4 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(i)* and *(ii)* Under the law which was applicable to the insured person at the time when he was accomplishing these periods

5 *(a)* and *(b)* In the case of old-age pensions, the cumulation of several pensions should be allowed On the other hand, the cumulation of old-age pensions with invalidity pensions is not admissible

Finally, cumulation of several invalidity pensions granted for the same cause cannot be admitted.

BRAZIL

4 *(a)* The reply is in the affirmative

*(b)* *(i)* The reply is in the negative

*(ii)* Yes, only under the law of the institution which is totalising

5 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

BULGARIA

4 The periods to be totalised for the maintenance of rights should comprise *(a)* contribution periods

*(b)* The reply is in the negative

*(ii)* Only under the law of the institution which is totalising.

5 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

CHILE

4. *(a)* The reply is in the affirmative

*(b)* The rights should be maintained solely under the law of the institution that is totalising (solution *(ii)*)

5 *(a)* The reply is in the affirmative.

*(b)* No reply is given

CHINA

4 It is desirable that the periods to be totalised should comprise

*(a)* contribution periods,

*(b)* and also periods in respect of which contributions are not payable but during which rights are maintained under the law of the institution which is totalising *(ii)*

5 It is desirable that the periods referred to in paragraphs *(a)* and *(b)* should both be included for the purpose of totalisation.

FRANCE

4 *(a)* The reply is in the affirmative.

*(b)* Same reply as to Question 3.

5 Same reply as to Question 3

HUNGARY

4 For the purpose of maintaining rights in course of acquisition as against the insurance institutions of Members adopting the scheme, the Government considers it necessary that there should be totalisation of *(a)* contribution periods, and *(b)* periods in respect of which contributions have not been payable but during which rights are maintained As regards the method to be adopted, it approves the solution indicated under *(i)*.

5 As under the legislation of the majority of States the periods mentioned are reckoned for the purpose of maintaining rights in course of acquisition, inasmuch as the beneficiary of the pensions cannot, as a rule, accept insurable employment during such periods, the Government is of opinion that the periods specified under *(a)* and *(b)* should be taken into account.

ITALY

4. The international scheme for the maintenance of rights in course of acquisition should aim at securing some measure of uniformity on certain points in the insurance legislations which apply to migrant workers

As regards the totalisation of periods for the purpose of maintaining rights in course of acquisition, it should be recognised that if an insured person migrates from a country A to a country B in which he is also insured, the legislative provisions limiting the maintenance of rights in country A will cease to apply to him and he will become subject to those of country B, and *vice versa*

Only by applying this principle will it be possible to protect migrant workers and to avoid a situation in which a right to pension recognised by one Member in respect of its quota of contribution periods or assimilated periods is invalidated owing to the refusal of another Member to recognise the right because the time limit for its maintenance has been exceeded or because the periods themselves are not recognised

For these reasons the Government considers that for the purpose of maintaining rights in course of acquisition the periods to be totalised should be the contribution periods *(a)* and the assimilated periods recognised under the law of at least one of the institutions concerned *(b) (i)*

5 In the particular case mentioned in question 5, and in view of what has been said above, it is considered that for the purpose of maintaining rights in course of acquisition, the periods to be totalised should include those during which a pension is paid by an invalidity insurance, old-age insurance, or widows' and orphans' insurance institution of any other Member adopting the international scheme *(a)*, and also those during which a pension is paid by another branch of social insurance, provided that, and for so long as, such periods are recognised under the law of the Member which is totalising

LUXEMBURG

4 and 5 For the purpose of maintaining rights in course of acquisition as against each of the institutions concerned, the periods to be totalised should include contribution periods and also periods in respect of which contributions are not payable but during which rights are maintained under the law of the institution which is totalising, together with the periods mentioned in Question 5 *(a)* and *(b)*

NETHERLANDS

4 *(a)* The reply to this Question raises one of the difficulties referred to in the "Preliminary observation" on page 16

The legislation of the Netherlands is based on the principle that a person who has once been insured remains always an insured person, and that the contributions paid, and the rights in course of acquisition resulting from the contributions paid, remain intact without the insured person being obliged to make any payment or take any other action whatsoever in order to maintain his rights The Government is nevertheless aware that a different system is in force in other countries, and that in many countries rights in course of acquisition may be lost if contributions cease to be paid

The Government of the Netherlands is of opinion that for the purpose of the scheme, the periods of insurance spent by a worker, whether in one country or another, should be regarded as a whole In accordance with this principle, a worker who had been insured in one country and had paid his contributions (or in respect of whom contributions had been paid), and who became subject to insurance in another country for the purpose of which contributions had been paid by or in respect of him, should be entitled, for the purpose of maintaining his rights in course of acquisition in the former country, to reckon the contributions paid in the latter country and *vice versa* It follows that the Government's reply to Question 4 *(a)* is in the affirmative

*(b)* Totalisation should also apply to periods during which the worker was insured but was not required to pay contributions The non-payment of contributions should be examined in the light of the legislation of the country in which the worker was subject to insurance during the period for which contributions were not paid The following example will make the replies to Questions 4 *(b)*, *(i)* and *(ii)* clear

Take the case of a worker who has been subject to insurance in country A for a certain period and has paid contributions during that period He goes to country B, becomes subject to the insurance in operation in that country, and contributions are paid in respect of him in country B He then falls sick Under the law applicable to him at that moment, namely, the law of country B, he is exempt from the payment of contributions throughout the period of his sickness For the purpose of maintaining his rights in course of acquisition and the validity of the contributions paid in both countries A and B, the period of sickness should be totalised But if under the legislation of country B he is not exempt from the payment of contributions, the period of sickness should not be totalised in country A

5 *(a)* The reply to this question is identical with that to Question 4

Periods during which a pension is paid should be totalised only when, under the national legislation in virtue of which the pension is paid, a worker is exempt from the obligation to pay contributions for the period during which he is in receipt of the pension

*(b)* Totalisation should not be effected in the case of pensions paid otherwise than as benefit under invalidity insurance, old-age insurance, or widows' and orphans' insurance, unless under the legislation in virtue of which the pension is paid there is no obligation to pay compulsory invalidity, old-age, or widows' and orphans' insurance contributions for the period during which the pension is paid

POLAND

4 The Government is in favour of totalisation, for the purpose of maintaining rights in course of acquisition, of *(a)* contribution periods, *(b)* periods in respect of which contributions are not payable but during which rights are maintained under the law of at least one of the institutions concerned (point *(i)*)

The totalisation of insurance periods for the maintenance of rights in course of acquisition is a fundamental principle of the international scheme for the maintenance of rights Unless this principle is applied broadly and effectively, it will not be possible to remedy the principal defect in the present situation of workers affiliated to insurance institutions in several States Moreover, there does not appear to be any necessity, either from the technical or from the social point of view, to restrict the insurance periods reckoned for the purpose of totalisation to contribution periods Yet this is exactly what would happen if the method indicated under *(ii)* were adopted There would be no modification at all of the legal situation arising from the national legislation, and the adoption of a solution of this kind would not result in any international progress as regards the totalisation of assimilated periods in the new international scheme for the maintenance of rights

Further, the adoption of the restrictive solution would result in the persons concerned suffering serious loss Whenever insured persons ceased to pay contributions, for example because they were unemployed, they would be obliged to consider, in the light of the legislation of each country, in which they had been successively insured, how they could ensure the eventual maintenance, as against each of these countries of rights in course of acquisition which would very often be determined in a different way under each legislation It would thus be very difficult, if not in practice impossible, to maintain rights in a situation in which migrant workers may well find themselves and which certainly deserves consideration

It therefore seems more reasonable to adopt the proposal indicated under *(i)*, which is based on the principle that as long as an insured person maintains his rights in course of acquisition in one country, owing to the fact that certain assimilated periods are reckoned, his rights do not lapse in respect of the other countries, even if under the legislation of those countries these periods are not taken into account, as would be the case under the method indicated under *(ii)* as it is interpreted by the Polish Government Moreover, the principle is already admitted in various bilateral Conventions

5 *(a)* Yes In the absence of a provision of this kind, rights in course of acquisition in one State in which, for example, the conditions for the payment of invalidity benefit were more rigorous might lapse during a period in which the insured person would already be drawing an invalidity pension from the insurance scheme of a State in which the conditions of benefit were more favourable

*(b)* Yes If benefit periods in two countries are to be assimilated for the purpose of the maintenance of rights in course of acquisition, it would seem to be necessary likewise to assimilate within the same limits benefits paid by another branch of social insurance the receipt of which would maintain rights in course of acquisition

SPAIN

4 *(a)* and *(b)* The reply is in the affirmative, consistently with the view expressed in 1932, account must be taken of both contribution periods and assimilated periods for the purpose of the maintenance of rights and for the reckoning of the qualifying period. The Government prefers the proposal indicated under *(i)* of clause *(b)*, since that indicated under *(ii)* would not completely achieve the desired end, which is the maintenance of duly acquired rights.

5 *(a)* and *(b)* The reply is in the affirmative on both clauses. If the periods indicated in clauses *(a)* and *(b)* were not totalised, there would be a risk of the insured person losing the rights he had acquired under a particular institution in which the conditions for the payment of benefit did not coincide with those of another institution

SWEDEN

4 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative.

*(i)* and *(ii)* It would seem to be appropriate to apply the law of the institution with which the person concerned was insured during the period in question

5. *(a)* The reply is in the affirmative.

*(b)* Yes, but it would seem that the question of the legal consequences of the receipt of corresponding benefits ought to be settled in accordance with the law of the institution with which the person concerned was insured during the period in question.

YUGOSLAVIA

4 The periods to be totalised should include both contribution periods and periods in respect of which contributions are not payable but during which rights are maintained under the law of the institution which is totalising If the rule indicated under 4 *(b) (i)* were adopted, the persons affected by the rule would be in a privileged position as compared with persons insured in one country only.

5 *(a)* The reply is in the affirmative as regards periods during which an individual pension is paid by an invalidity and old-age insurance institution, provided that a corresponding pension paid under the law of the institution which is totalising would maintain the rights in course of acquisition, an exception being made in the case of invalidity pensions granted for a small reduction of earning capacity The periods during which a pension is paid to an insured person under widows' and orphans' insurance should not be totalised for the purpose of the maintenance of rights in course of acquisition. Pensions paid by widows' and orphans' insurance institutions should accordingly be eliminated

*(b)* The reply is in the affirmative

**6. Do you consider that, for the purpose of reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special advantages (guaranteed minimum pensions) as against each of the institutions concerned, the periods to be totalised should comprise :**

**(a) contribution periods ;**

**(b) and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions :**

**either (i) under the law of at least one of the institutions concerned ;**

**or (ii) only under the law of the institution which is totalising ?**

**Please state whether you prefer solution (i) or solution (ii).**

AUSTRIA

6 (a) The reply is in the affirmative, on the understanding that in all cases the national law of that country is applied in which the periods in question were spent

(b) (i) The reply is in the affirmative

(ii) The reply is in the negative.

BELGIUM

6 (a) The reply is in the affirmative

(b) The reply is in the affirmative.

(i) and (ii) Under the law which was applicable to the insured person at the time when he was accomplishing these periods

BRAZIL

6 (a) The reply is in the affirmative

(b) (i) The reply is in the negative.

(ii) Yes, only periods which are counted under the law of the institution which is totalising

BULGARIA

6 (a) The reply is in the affirmative

(b) The reply is in the negative

CHILE

6 *(a)* The reply is in the affirmative.

*(b)* Yes, only under the law of the institution that is totalising.

CHINA

6 The periods to be totalised should comprise contribution periods and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions under the law of the institution which is totalising *(b) (ii)*

FRANCE

6 *(a)* The reply is in the affirmative

*(b)* Same reply as to Question 3

HUNGARY

6 The Government considers it desirable that the periods indicated under *(a)* and *(b)* should be totalised As regards the method to be followed, it proposes the solution indicated under *(i)*.

ITALY

6. While for the purpose of maintaining rights in course of acquisition, which represent a claim that will mature in time, it seems fair to adopt the more liberal solution when totalising periods, for the purpose of reckoning the qualifying period (minimum duration of insurance) prescribed for entitlement to guaranteed minimum pensions, on the other hand, it does not seem possible to go beyond the provisions made by the State concerned for those who are insured only under its own law

While it is considered that the contribution periods *(a)* should be totalised, it is thought that periods in respect of which contributions are not payable, but which are counted for the purpose of reckoning the qualifying period, should be totalised only to the extent provided for in the law of the institution which is totalising *(b) (ii)*

LUXEMBURG

6 For the purpose of reckoning the qualifying period as against each of the insurance institutions concerned, the periods to be totalised should comprise contribution periods and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period under the law of the institution which is totalising

NETHERLANDS

6. For the purpose of reckoning the qualifying period and the number of contributions required for entitlement to special benefits, the periods during which the worker has been subject to insurance in

the different countries or the number of contributions paid in the different countries should be totalised Periods for which contributions are not paid should be totalised only if non-payment of the contributions is in accordance with the national legislation applicable to the insured person during the period of non-payment It follows that when the accomplishment of the qualifying period entails the payment of contributions, only contributions that are actually paid can be reckoned

For the rest, the reply is identical with the reply to Question 4 *(b) (i)* and *(ii)*

POLAND

6 The reply is in the affirmative to both *(a)* and *(b)* The Government is in favour of the method indicated under *(ii)*

It would seem to be excessive to take into account. for the purpose of reckoning the qualifying period, assimilated periods which are not generally provided for by national legislation, merely because such periods are taken into account under the legislation of another State in which the worker had been insured The length of the qualifying period is such an essential condition of invalidity, old-age and widows' and orphans' insurance that to grant a privilege in this respect to persons insured successively in several countries, as compared with those who are insured only in one country, might be considered as excessive

Under the method indicated in *(i)*, such persons would have benefited in country A by the taking into account, for the purpose of reckoning the qualifying period, of assimilated periods not recognised under the legislation of that country, simply because such periods are recognised under the legislation of country B or C where they might have spent a relatively brief period of insurance The non-adoption of the method indicated under *(i)*, as regards the reckoning of the qualifying period, does not entail for the persons concerned all the difficulties which would result from the non-adoption of the same course as regards the maintenance of rights in course of acquisition There is no reason for adopting a method which would be very disadvantageous to the persons affected and which departs so considerably from the provisions of the national legislation It should be noted, moreover, that so far as is known a method of this kind is not provided for in any bilateral agreements.

SPAIN

6 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative to *(i)* See the reply to Question 4 and the view there expressed

SWEDEN

6 *(a)* The reply is in the affirmative.

*(b)* The reply is in the affirmative

*(i)* and *(ii)* Yes , it would appear necessary to apply the law of the institution with which the person concerned was insured during the period in question

YUGOSLAVIA

6 As was pointed out in the reply to question 4, the Government is in favour of the totalisation of contribution periods and periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the number of contributions prescribed under the law of the institution which is totalising (affirmative reply to 6 *(a)* and 6 *(b) (ii)*)

**7 *(a)*. Do you consider, however, that a restriction should be applied where the national law of one of the Members concerned subjects the grant of certain advantages to the condition that the periods must have been spent in an occupation covered by a special insurance scheme (e.g. salaried employees' insurance, miners' insurance)?**

***(b)* If so, do you propose that in such cases only periods spent under the corresponding special insurance scheme of the other Member or Members concerned should be totalised for the purpose of reckoning the qualifying period or the prescribed number of contributions ?**

***(c)* Where, however, there does not exist in one of the States Members referred to in paragraph *(b)* a special insurance scheme for the occupation in question, do you agree that periods spent in that State in the occupation in question under a non-corresponding scheme should be totalised for the purpose of reckoning the qualifying period ?**

***(d)* If the reply to *(c)* is in the affirmative, should totalisation be effected compulsorily, or at the discretion of the institution reckoning the qualifying period ?**

AUSTRIA

7. *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative

*(d)* Totalisation should be effected compulsorily

BELGIUM

7 *(a)* and *(b)* The replies are in the affirmative

*(c)* The reply is in the negative

BRAZIL

7 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative

*(d)* Totalisation should be left to the discretion of the institution reckoning the qualifying period

BULGARIA

7 *(a)*, *(b)* and *(c)* The replies are in the affirmative

*(d)* Totalisation should be effected at the discretion of the institution called upon to reckon the qualifying period

CHILE

7 *(a)*, *(b)* and *(c)* The replies are in the affirmative

*(d)* Totalisation should be left to the discretion of the institution reckoning the qualifying period

CHINA

7 *(a)* In such a case a restriction should be applied

*(b)* The reply is in the affirmative

*(c)* In that case, the Government agrees that periods spent in that State in the occupation in question under a non-corresponding scheme should be totalised

*(d)* Totalisation should be effected compulsorily

FRANCE

7 The international scheme should apply only to social insurance schemes which are general in scope (including salaried employees' insurance schemes) and to miners' insurance schemes, it should not be extended to special schemes such as those in force for workers and employees on railways (national systems and secondary or local systems, tramways), naval conscripts, salaried employees in public services, etc

HUNGARY

7 *(a)* The application of restrictions is desirable when the national law of the Members concerned subjects the grant of certain advantages to the condition that the periods must have been spent in occupations covered by a special insurance scheme

*(b)* For the purpose of reckoning the qualifying period or the prescribed number of contributions, the only periods to be totalised should be periods spent under the corresponding special insurance scheme of the other Member or Members concerned It would, however, be equitable to provide that when, under the national law of the State which is totalising or under the law of another State Member, a period spent under a general scheme has to be reckoned together with a period spent under the special scheme, the reciprocal totalisation of the periods spent under the two different schemes should be obligatory even in relations between States.

*(c)* When there does not exist in one country a special insurance scheme for a particular occupation, it is desirable that for the purpose of reckoning the qualifying period, periods spent by the insured persons under different schemes should be totalised

*(d)* Totalisation should be effected compulsorily.

ITALY

7 The restriction mentioned in Question 7 is justified by the advantages granted under special insurance schemes on condition that a certain period of time has been spent in the occupation covered (earlier pensionable age in the case of old-age insurance, higher rate of pension, etc ) From this point of view totalisation might be effected for the purpose of reckoning the qualifying period or maintaining rights in course of acquisition if the periods have all been spent under special schemes of the various States Members, or in the event of there being no special scheme, under a general scheme but in the same occupation

Nevertheless attention must be drawn to the fact that when the law establishes no connection between special and general schemes, as is the case in certain countries, a person who is insured under a special scheme and who owing to migration changes his occupation and becomes insured under a general scheme loses all his rights, both as regards the qualifying period and as regards the rights in course of acquisition in respect of the contribution periods spent under the special scheme

Some connection should therefore always be established, and if there is no general scheme in one of the Member States, provision should be made for less favourable conditions which nevertheless permit of totalising all the contribution periods whatever the scheme under which they have been spent

Subject to this reservation, the replies to paragraphs *(a) (b)* and *(c)* of Question 7 are in the affirmative, while as regards paragraph *(d)* it is held that totalisation should be effected compulsorily

LUXEMBURG

7 In the case of special insurance schemes contribution periods should be reckoned only in accordance with the law of the institution which is effecting totalisation

Where there does not exist in one of the States concerned a special insurance scheme for the occupation in question, periods spent in that State and in that occupation under a non-corresponding scheme should be totalised for the purpose of reckoning the qualifying period

NETHERLANDS

7 Some latitude ought to be allowed to the different countries on this point Each country ought to be at liberty to totalise only the periods spent or the contributions paid in accordance with the rules of a corresponding insurance scheme

The replies to *(a)* and *(b)* are in the affirmative
The reply to *(c)* is also in the affirmative
Totalisation should be effected compulsorily

POLAND

7 *(a)* and *(b)* In principle, the restrictions indicated in these clauses should be applied

*(c)* The Government is of opinion that if there is no special insurance scheme in country A, it will be necessary to take into

account for the purpose of reckoning the qualifying period or the number of contributions required under a special insurance scheme in force in country B, periods spent under the general insurance scheme of country A while working in the occupation in question The reason for the restrictions indicated in clauses *(a)* and *(b)* is usually the desire to maintain the special advantages in favour of persons employed in the occupation for which the special insurance scheme has been established This characteristic would be destroyed for the special benefit of persons insured in several countries if periods of insurance spent outside the occupation had to be taken into account Hence the abandonment of the restriction in the case indicated in clause *(c)* would appear to be justified, and all the more so since there may be some difficulty in drawing a strict line of demarcation between special schemes and general schemes Thus, the workers' pension insurance scheme in force in Poland under the Social Insurance Law of 20 March 1933, although it does not provide for a separate scheme of pensions insurance for miners, fixes for this class of workers a higher rate of contribution than is applied generally, conferring on them and their families in return more favourable rights to benefit than those enjoyed by other classes of workers Periods spent by miners under a general scheme of insurance with a higher rate of contribution and with special benefit rights ought in any event to be assimilated, when the international regulations are being applied, to those spent under a special scheme for miners

*(d)* In the event of the rule indicated in *(c)* being adopted, it should be applied compulsorily To make the application of the rules dependent on the decision of the institutions would be in conflict with the general character of the obligations flowing from the Convention

SPAIN

7 *(a)* The Government prefers to reply in the affirmative, since it would not be equitable that a person should be able to pass from a general insurance scheme to a special scheme without complying with certain safeguarding conditions and without being subject to certain restrictions designed to avoid loss to the special scheme

*(b)* The Government does not accept the arrangement proposed since, while admitting that there is not an absolute parity between general schemes and special schemes as regards totalisation, it is also of the opinion that there should not be any absolute separation between the two kinds of schemes

*(c)* The Government accepts the suggested arrangement, which is already embodied in the Franco-Spanish Agreement though its operation is not limited to the reckoning of the qualifying period

*(d)* Totalisation should be effected compulsorily, since this would give the maximum of security and ensure the greatest uniformity in the application of the Convention.

SWEDEN

7 It would seem to be doubtfully necessary or expedient to complicate the Convention by including in it provisions of the kind suggested

YUGOSLAVIA

7 *(a)* A restriction to the principle of totalisation should be applied where the national law of one of the Members subjects the grant of certain advantages to the condition that the periods must have been spent in an occupation covered by a special insurance scheme

*(b)* In determining the periods which should be totalised, it is desirable to take as a basis the legislation of the country in which each period was accomplished If the legislation of the country in which the insurance period was accomplished takes account, as regards the calculation of the qualifying period and the number of contributions required, of affiliation to a special insurance scheme for the purpose of a corresponding special insurance scheme in the same country, the rule adopted by that legislation should be applied to the same extent in the international sphere

*(c)* Where, however, there does not exist in one of the States mentioned in paragraph *(b)* a special insurance scheme for the occupation in question, it might be agreed that the periods spent in that State in the occupation in question under a non-corresponding scheme should be totalised for the calculation of the qualifying period, provided that the occupation in question is undoubtedly covered by the special insurance scheme of the country in which the qualifying period is reckoned In case of doubt, the periods should not be totalised Totalisation should only be carried out if the non-corresponding insurance scheme is at least equivalent to the special insurance scheme in the country which is totalising If such is not the case, it is necessary to determine an equalisation constant This could be done either by agreement between the institutions or by the body mentioned in question 42 In order to avoid all the difficulties to which such totalisation might give rise, it might be laid down in general that periods spent under a non-corresponding insurance scheme should be reckoned at only half their actual duration in totalising for the purpose of calculating the qualifying period and the number of contributions required

*(d)* It is not desirable to leave totalisation to the discretion of the institution which reckons the qualifying period

*Note* The Government would also agree to a negative reply to Question 7 *(c)*

**8. Do you consider that the rules for the totalisation of insurance periods for the purpose of reckoning the qualifying period should also apply :**

**(a) to the recovery of rights ?**

**(b) to the right to enter voluntary insurance ?**

AUSTRIA

8 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

BELGIUM

8 *(a)* and *(b)* The replies are in the affirmative.

BRAZIL

8 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

BULGARIA

8 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

CHILE

8 *(a)* and *(b)* The replies are in the affirmative

CHINA

8 The Government considers that the rules for totalisation should apply to *(a)* and *(b)*

FRANCE

8. The reply is in the affirmative

HUNGARY

8 *(a)* and *(b)* The rules for the totalisation of insurance periods for the purpose of reckoning the qualifying period should also apply to the recovery of rights and to the right to enter voluntary insurance

ITALY

8 It is considered that the totalisation of insurance periods should also apply to the recovery of rights and to the right to enter voluntary insurance

LUXEMBURG

8 Favourable consideration might be given to the extension of the rules concerning the totalisation of insurance periods for the purpose of reckoning the qualifying period to the recovery of rights and to the right to enter voluntary insurance

NETHERLANDS

8 The replies are in the affirmative to both *(a)* and *(b)*

POLAND

8 The reply is in the affirmative to both *(a)* and *(b)*.

SPAIN

8 Yes, the refusal of this right to migrant workers would be a serious injury to them, for it would mean denying to them in the international regulations a right which is ensured by almost all national legislation The principle is recognised in the Franco-Spanish Agreement (Article 8, section 1)

SWEDEN

8 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

YUGOSLAVIA

8 The rules for the totalisation of insurance periods for the purpose of reckoning the qualifying period should in any case apply to the recovery of rights and perhaps also to the right to enter voluntary insurance

When, however, under the law applying to an insurance institution, compulsory insurance is incompatible with voluntary insurance, compulsory insurance in another country should result in loss of the right to enter voluntary insurance even if that right is acquired by the totalisation of insurance periods

**9. Do you propose to provide that contribution periods and assimilated periods spent simultaneously in two or more States Members participating in the scheme shall be reckoned once only for the purpose of totalisation ?**

AUSTRIA

9 The reply is in the affirmative

BELGIUM

9 Each country should take account of the periods of liability to insurance on the basis of its own law and should not take into consideration for the purposes of totalisation the periods of liability to insurance which may have been spent simultaneously under the law of another country

BRAZIL

9 The reply is in the affirmative

BULGARIA

9 The reply is in the affirmative

CHILE

9 The periods mentioned should be reckoned once only, but consideration might be given to individual cases

CHINA

9 The Government proposes that these periods should be reckoned once only for the purpose of totalisation

FRANCE

9 The reply is in the affirmative

HUNGARY

9 Contribution periods and assimilated periods spent simultaneously in two or more States Members should be reckoned once only for the purpose of totalisation

ITALY

9 It is considered that contribution periods spent simultaneously in two or more States Members participating in the scheme should be reckoned once only for the purpose of totalisation

LUXEMBURG

9 A provision to this effect is indispensable

NETHERLANDS

9 Yes, these periods should be reckoned only once for the purpose of totalisation

POLAND

9. The reply is in the affirmative

SPAIN

9 Yes, this rule is laid down in the Spanish Agreement with France (Article 8, section 1) and in almost all international treaties dealing with insurance Any other arrangement would be equivalent to placing the migrant worker in a privileged position as compared with other insured persons

SWEDEN

9 The reply is in the affirmative

YUGOSLAVIA

9 The Government considers that contribution periods an assimilated periods spent simultaneously in two or more Stated Members should be reckoned once only for the purpose of totalisations

**10. *(a)* Do you propose that it should be laid down that, for the purpose of totalisation, periods should be reckoned only if in the aggregate they exceed a certain minimum ?**

***(b)* If so, must this minimum have been spent**

***(i)* under a particular national scheme of invalidity insurance, of old-age insurance, or of widows' and orphans' insurance ?**

**or *(ii)* entirely with a particular insurance institution ?**

***(c)* How do you propose to fix this minimum ?**

AUSTRIA

10 *(a)* The reply is in the negative

BELGIUM

10 *(a)* and *(b)* A distinction should be made between that part of the pension which is constituted by the system of capitalisation and that formed by the system of distribution In the first case the reply is in the negative and in the second affirmative

The Government considers that a minimum of three years' contributions, consecutive or not, should be fixed

BRAZIL

10 *(a)* The reply is in the affirmative

*(b)* Under a particular national scheme of invalidity insurance, of old-age insurance, or of widows' and orphans' insurance

*(c)* The Government proposes that the minimum should be fixed at twelve months' contributions

BULGARIA

10 *(a)* The reply is in the affirmative

*(b)* The minimum in question should have been spent entirely with a particular institution *(ii)*

*(c)* 52 weeks

CHILE

10 *(a)* The reply is in the affirmative

*(b)* Under a particular national scheme of invalidity insurance, of old-age insurance or of widows' and orphans insurance

*(c)* Seven months' contributions

CHINA

10 No , short periods should not be disregarded

FRANCE

10 Same reply as to Question 3

HUNGARY

10 *(a)* It is not desirable to prescribe minimum periods for the purpose of the maintenance of rights in course of acquisition However, in view of the fact that a qualifying period has to be completed, and in view of the other conditions for the acquisition of rights, only periods which reach a certain minimum should be reckoned

*(b)* The minimum period must have been spent under a particular national scheme of insurance (the solution suggested under *(a)*), and not with a particular insurance institution

*(c)* The Government proposes that the minimum should be fixed at twelve contribution weeks

ITALY

10. Question 17 below refers to the possibility of disregarding short periods for the purpose of apportioning the liability of the several institutions Question 10 refers to the possibility of a similar procedure, which might be applied in a different degree, for the purpose of totalisation

In the case considered, the effect of disregarding short periods would be chiefly felt when the purpose of totalisation is to reckon the qualifying period In social legislation, particularly as regards invalidity or widows' and orphans' pensions, a qualifying period confers the special advantages of guaranteed minimum pensions, but if it has not been completed it involves the loss of all rights If this is borne in mind, it will be seen that all insurance periods, however short, are very important and should therefore be taken into account

The reasons for disregarding such periods could only be based on administrative convenience. They have some significance when the payment of small sums, such as would give rise to excessive administrative work, is under consideration, but this point is covered by Question 17, while there can be no great difficulty in keeping a record even of short periods Moreover, if allowance is to be made for the accumulation of successive periods, even when they are not consecutive, a continuous record will be essential

On the other hand, as will be explained in the reply to Question 17, if uneven distribution is to be avoided, the minimum period should not be a fixed one but should be proportional to the aggregate period, and to this end a continuous record is necessary If a period of only three months were to be disregarded, as in the example given in the draft Questionnaire approved by the Conference, an insured person who had in fact paid contributions for the whole period of qualification (for instance 3 months in A and 34 months in B where the qualifying period is three years) might lose his right to pension

For these reasons the replies to Question 10 *(a)*, *(b)* and *(c)* are in the negative

LUXEMBURG

10 Periods which in the aggregate do not exceed thirteen contribution weeks spent under the same insurance institution should be excluded

NETHERLANDS

10 The reply to this Question is in the negative There is no reason why a short period of insurance should not count

POLAND

10 *(a)* The Government does not consider it necessary to fix a minimum for the periods to be totalised A number of bilateral agreements make no provision for such a restriction The exclusion of insurance periods of even a relatively short duration spent in another country might be prejudicial to the insured persons or their dependants by depriving them, in cases where periods below a certain minimum were not counted, of the right to benefit Certain administrative reasons might justify the exclusion of minimum periods, for the purpose of a proportional reduction of benefits, by a State in which insurance periods of longer duration have been spent, as well as the non-payment of benefits by a State under the insurance scheme of which minimum periods have been spent, but they should not, by the application of such a restriction, entirely deprive insured persons or their dependants of insurance benefits from all of the States concerned

*(b)* In the event of the proposal contained in *(a)* being adopted, the Government would suggest that the minimum should have been spent under a particular national insurance scheme *(i)* There appears to be no justification whatsoever for the proposal contained in *(ii)* So far as the Government is aware, such a restriction is not provided for in any bilateral agreement It would not be just to lay down a rule which would have the effect of excluding from totalisation periods which, if totalised, would constitute a long period of insurance but none of which, if distributed over periods spent with different insurance institutions, would reach the minimum fixed by the Convention

*(c)* In the event, however, of the principle of minimum periods being adopted, the Government would propose that as short a minimum as possible be fixed, not exceeding three months

SPAIN

10 *(a)* Yes, this rule is very generally adopted in international treaties It figures in the Franco-Spanish Agreement (Article 8, section 3 *in fine)* and it is required for administrative reasons

*(b) (i)* Yes, it would be unjust to exclude these periods from totalisation

*(c)* The Government proposes a period of 75 contribution days or 13 contribution weeks under the same national scheme of insurance, this being a condition which has already been accepted

SWEDEN

10 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative to *(i)* and in the negative to *(ii)*

*(c)* (No reply is given)

YUGOSLAVIA

10 *(a)* The Government considers that for the purpose of totalisation, periods should be reckoned only if they exceed a certain minimum.

*(b)* and *(c)* This minimum should be fixed at not less than six and not more than twelve months if it has to be spent under the same national invalidity, old-age and widows' and orphans' insurance scheme, and not more than six months if it has to be spent entirely with a particular insurance institution

Where national legislation excludes from totalisation the periods spent with the same institution which do not reach a certain minimum within a fixed time limit, the periods thus eliminated by national legislation should be excluded from totalisation provided that they do not amount to twelve months in all

DETERMINATION OF BENEFIT LIABILITY OF EACH INSURANCE INSTITUTION

**11. Do you agree with the principle that each institution, while totalising the periods to be counted, should determine only in accordance with its own law whether the claimant satisfies the prescribed qualifying conditions ?**

AUSTRIA

11 The reply is in the affirmative

BELGIUM

11 The reply is in the affirmative

BRAZIL

11 The reply is in the affirmative

BULGARIA

11 The reply is in the affirmative

CHILE

11 Yes, this is the only acceptable principle.

CHINA

11 This principle should be accepted

FRANCE

11 The reply is in the affirmative.

HUNGARY

11 The Government accepts the principle that each institution, while totalising the periods to be counted, should determine only in accordance with its own law whether the claimant satisfies the prescribed qualifying conditions

ITALY

11 The conditions prescribed by the law of a country for the payment of benefit apply in all cases This rule ensures the necessary equality of treatment, both as between nationals and aliens and as between persons who have been continuously insured in the country and those whose insurance periods have been spent in several countries

While, on the one hand, the totalisation of insurance periods is appropriate to the purpose of maintaining rights, it seems reasonable that benefits should be payable only when the relevant conditions laid down in the law of each Member State concerned have been fulfilled

LUXEMBURG

11 Each institution while totalising the periods to be reckoned in accordance with the international scheme should determine only in accordance with its own law whether the conditions for the payment of benefit are fulfilled

NETHERLANDS

11 This principle can be accepted

POLAND

11 The reply is in the affirmative

SPAIN

11 The reply is in the affirmative, especially having regard to the fact that, with the international unification of the legislation of the different countries, the disadvantages which the insured person suffers by the differences at present existing will tend to disappear

SWEDEN

11 The reply is in the affirmative

YUGOSLAVIA

11 The Government agrees with the proposed principle as any other rule might create difficulties of application

**12. Do you consider that the benefit due from each institution should be calculated according to the following rules ?**

*(a)* **Benefits (benefit components) varying with the time spent in insurance :**

**Each institution with respect to which the claimant satisfies the qualifying conditions determines the amount in accordance with its own law, having regard only to periods counted for the purpose of calculating benefits under that law.**

*(b)* **Benefits (benefit components) determined independently of the time spent in insurance [1] :**

**In this case only benefits, or benefit components, determined independently of the time spent in insurance (save the qualifying period), are to be reduced in the proportion :**

**either *(i)* of the periods counted for the purpose of calculating benefits under the law of the institution to the total of the periods counted for the purpose of calculating benefits under the laws of all the institutions concerned ;**

**or *(ii)* of the contribution periods spent under the law of the institution to the total of the contribution periods spent under the laws of all the institutions concerned.**

**Please state whether you prefer solution *(i)* or solution *(ii)*.**

**13. Do the rules suggested in paragraphs *(a)* and *(b)* of Question 12 appear to you sufficiently explicit for the purpose of being applied to the different types of benefits, whether they vary with the time spent in insurance or are determined independently of the time spent in insurance ?**

**If not, please indicate what modifications or additional provisions are desirable.**

AUSTRIA

12 *(a)* The reply is in the affirmative.

*(b)* The reply is in the affirmative to *(i)*

13 The reply is in the affirmative

[1] Examples of benefits, or benefit components, determined independently of the number and amount of contributions pensions the rate of which is the same for all pensioners, fixed sums or basic amounts determined independently of the time spent in insurance, fixed supplements, guaranteed minimum pensions or allowances

BELGIUM

12 *(a)* The reply is in the affirmative

*(b)* A distinction should be made between countries where the national law is based on the system of capitalisation and those where it is based on the system of distribution In the first case, the question falls In the second case, there is no objection to account being taken of the total number of years spent in insurance in each country and the amount of the benefit due being fixed in proportion to the number of years spent in the country liable for it

13 This question falls in view of the reply to Question 12 *(a)* and *(b)*

BRAZIL

12 *(a)* The reply is in the affirmative

*(b)* *(i)* The reply is in the negative

*(ii)* The reply is in the affirmative

13 The Government does not consider further detailed provisions necessary

BULGARIA

12 *(a)* The reply is in the affirmative

*(b)* *(i)* The reply is in the negative

*(ii)* The reply is in the affirmative

13 Other provisions do not appear to be necessary

CHILE

12 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative to *(i)* and in the affirmative to *(ii)*

13 Yes, no additional provisions appear to be necessary.

CHINA

12 The Government agrees with the rules suggested in paragraphs *(a)* and *(b)*

The Government prefers solution *(ii)*

13 The Government does not suggest any modifications of or additional provisions to the rules suggested in Question 12 .

FRANCE

12 Same reply as to Question 3

13 Same reply as to Question 3

## Hungary

12 *(a)* The Government considers that the rule here proposed is entirely sufficient as regards the calculation of benefits or benefit components varying with the time spent in insurance

*(b)* It seems desirable to adopt the solution indicated under *(a)* for the purpose of proportional allocation or the *pro rata* reduction of benefit components determined independently of the time spent in insurance

13 The rules indicated in 12 *(a)* and *(b)* appear satisfactory.

## Italy

12 and 13 Since these two questions are closely connected, they will be considered together

If the transfer of contributions or of reserves is rejected *a priori*, as a general rule on the ground that it would be difficult if not impossible to carry out, the only other method which would be more generally applicable is that of determining benefit liability *pro rata temporis* Under this system each institution is liable for a share of benefit proportionate to the time spent in insurance with it

While, however, it accepts in principle the proposal that benefit liability should be shared, the Government cannot entirely agree with the distinction drawn in paragraphs *(a)* and *(b)* of Question 12 What, in fact, is the component which should be considered as payable in full by each institution, and what is the component which should be shared ?

Paragraph *(a)* of Question 12 suggests that, in the case of benefits varying with the time spent in insurance, each institution determines the amount in accordance with its own law, having regard to the periods counted under that law This, in the simplest instance, would give the share as ascertained by the application of coefficients of reduction based on the number of contributions paid These coefficients are invariable, however long the period covered may be Since the time factor does not enter into the matter, the rule should be that each institution determines its share of benefit in accordance with the number of contributions it has received and accepts full liability for that part of the pension It should be observed that the expression "benefits varying with the time spent in insurance" does not seem too accurate, since it is not the time but the number of contributions paid which has to be taken into account

Paragraph *(b)* of Question 12 suggests that benefits determined independently of the time spent in insurance (and therefore distinct from those to which the preceding paragraph alludes) should be reduced The proportion of the said fixed component, or component assimilated to a fixed one, to the whole pension varies inversely with the time spent in insurance, and the component should therefore be reduced in the proportion of the period spent in the insurance of the institution which is liable to the total of the periods considered In this connection it must be observed that if the reduction is proportionate to the length of the periods recognised as valid, it ought, following the principle applied for the purpose of totalisation, also to include the periods which are assimilated under the laws of all the institutions concerned (solution *(a)*) Clearly, if certain periods,

even though they are not contribution periods, are recognised by the law of a country and are counted for the purpose of calculating benefits paid under that law, they should logically be included in the total on which apportionment is based

It has already been pointed out that the distinction drawn in paragraphs *(a)* and *(b)* of Question 12 does not yield very accurate results, or rather, while it holds good in the more usual cases, does not apply equally well in all Apart from the fact that the system itself is empirical, it is worth noting that if in principle migrants are not to be treated better than persons who remain in the same insurance, the rules suggested in Question 12 might, under some legislations, lead to errors

Among these legislations, some provide for payment of benefit not on the basis of a fixed component or a component assimilated to a fixed one, but under a scheme in which the coefficients of reduction, which are applied to contributions for the purpose of calculating benefit, vary according to the length of the period in respect of which contributions have been paid In other words, for an initial period or number and amount of contributions, a given coefficient of reduction is applied in the calculation of pension, for a second period or amount the coefficient is smaller and so on.

It has been alleged that, in this particular instance, which occurs under general and special schemes, the fixed component may be said to be that which is yielded by applying the difference between the lowest coefficient and the higher preceding coefficients, but this does not seem right, since the result yielded by the difference described varies according as the periods, to which the higher coefficients relate, are complete or partial periods, and the amount is less if the periods have not been completed.

Another type of legislation makes provision for a component which varies with time, and for a further component which may be considered as fixed and which is proportionate to the yearly average contribution paid during the period of insurance This is, as a rule, taken to be the full calendar period from the date of the first insurance contribution to the date at which pension is paid Here again the second component cannot properly be treated as independent of time, since it is affected not only by the length of the insurance period, but also by any interruptions which may have occurred and varies inversely with these In the case of migrants, not only should the insurance period spent under the law of the institution be taken into account, but also the contribution periods, assimilated periods and non-contribution periods spent under other laws, since these affect the average and consequently the basic amount

The two types of benefit examined suggest the expediency of altering the general solution contemplated in Question 12 and of substituting for it some other solution which would be more applicable to all cases and which might be expressed as follows .

" Each institution shall take into account all the contribution periods, or assimilated periods, spent in the insurance of all the institutions concerned, on the assumption that the contribution paid during the periods recognised by the other institutions was the average yearly contribution paid during the periods spent in its own insurance, and shall determine the amount of the benefit in

accordance with its own law The share of benefit for which each institution shall be liable shall be determined by the proportion of the period spent in its own insurance to the total of the insurance periods

The same procedure shall be applied when benefits are calculated on the basis of average or final wages, such wages being substituted for the yearly average contribution "

If the various legislations at present in force are examined, it will be seen that this solution is equally applicable in all cases. those in which the only benefit paid varies with time, those in which the only benefit paid is calculated by means of a fixed ratio, and those in which benefits include a fixed and a variable component.

LUXEMBURG

12 The rules for the calculation of benefit indicated under *(a)* and *(b) (i)* should be adopted

13 No reply is given

NETHERLANDS

12 The Government cannot agree to the rules proposed In order to avoid any possible doubt it may be pointed out, in connection with the phrase " having regard only to periods counted ", that under the Netherlands invalidity insurance legislation the pension is calculated with regard both to the contributions paid and to the duration of insurance Furthermore, the legislation is based on the principle of " Once insured, always insured " Consequently, in the calculation of the pension of a worker by or in respect of whom contributions have been paid only for a very short period, account is taken of the total duration of insurance, e.g in the case of a worker for whom contributions have been paid in the Netherlands from his 30th to his 35th year and who claims a pension on attaining his 65th year, account is taken of the total duration of his insurance, that is, from his 30th to 65th year. No derogation can be made from this rule

In this connection also the Government desires to point out that under Netherlands legislation no person can be admitted into insurance after he has attained the age of 35 years In view of this provision of Netherlands legislation the scheme under consideration would be of advantage only to foreign workers entering into insurance in the Netherlands before reaching the age of 35 years There is a special provision on this point in the Belgium-Netherlands Treaty (Article 5) A provision of this kind can well be included in a bilateral treaty, but not in a scheme such as is now under consideration This is a further instance of the difficulties mentioned above in the " Preliminary observation " on page 16

*(b)* The Netherlands legislation makes no provision for calculation on this basis The question whether solution *(i)* or solution *(ii)* would be preferable depends upon the financial basis of the legislation

13 The rules suggested in Question 12 *(a)* and *(b)* appear to be sufficiently explicit

POLAND

12 *(a)* The reply is in the affirmative

*(b)* The Government prefers the proposal contained in *(i)*, as being simpler and facilitating the calculation of the proportion payable by the insurance institutions of each of the States concerned.

13 The reply is in the affirmative In the case of the adoption of the solution proposed in the Government's reply to Question 50, the difficulties which might eventually arise in connection with the application of the rules suggested in Question 12, could, it would seem, be overcome by means of bilateral treaties between the States concerned.

SPAIN

12 *(a)* and *(b)* The Government replies in the affirmative, consistently with its reply in 1932 It prefers the arrangement indicated in point *(i)* of clause *(b)*

13 When replying in the affirmative to Question 53 *(b)* of the questionnaire of 1932, which dealt with the same problem as is raised by Question 12 of the present Questionnaire, the Government indicated that it did so despite the inconveniences of the proposed system of reduction pointed out by the Committee of Experts which examined the question

SWEDEN

12 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative to *(i)* and in the negative to *(ii)*

13 In view of the differences, which in certain cases are considerable, in the law on this matter in the various countries, it seems hardly possible to lay down general rules susceptible of being applied exactly in every case.

YUGOSLAVIA

12 The benefit due from each institution should be calculated according to the rules laid down in *(a)* and *(b)*. As regards the possibilities mentioned under *(b)* *(i)* and *(ii)*, the Government prefers that mentioned under *(i)* This appears fairer as it increases the share of countries which, in calculating pensions, take account of all periods, including those in respect of which contributions were not payable The Government could, however, also agree to the solution mentioned under *(ii)* if it is simpler to apply.

13 The definition of what is meant by the fixed benefit component (basic pension) is not sufficiently clear The pension may be composed in different ways a basic pension consisting of a fixed sum to which is added a further sum proportional to the contributions paid, or a basic pension consisting of a percentage of the earnings taken into account for the purposes of insurance, plus a percentage per year of contribution (first example, basic pension of 20 per cent.

plus 2 per cent per year of contribution) or a basic pension consisting either of a fixed sum or of a percentage of the earnings taken into account for the purposes of insurance which becomes payable as soon as the qualifying period is completed and is increased either by an amount varying in proportion to the contributions paid after the qualifying period has been completed or by a percentage of the earnings taken into account for purposes of insurance for each year of contribution after the completion of the qualifying period (second example, basic pension acquired after five years of contribution equalling 30 per cent of the earnings taken into account for purposes of insurance, plus 2 per cent of those earnings for each year of contribution after the completion of the qualifying period) It is necessary to consider in the latter case what is to be regarded as the fixed and what as the variable benefit component

If the terms of question 12 *(b)* are taken strictly, the above examples would give different results simply owing to the fact that the composition of the pension is differently defined in the two examples For an insurance period of 15 years spent in each of the two insurance institutions, the pensions would be as follows . In the first example the pension would be 15/30 ×20 per cent +15 ×2 per cent =40 per cent i e 80 per cent. in all, as if 30 years of insurance had been spent with the same institution In the other example, the pension would be calculated as follows : 15/30 ×30 per cent.+10 ×2 per cent=35 per cent, or 70 per cent in all The application of the exact terms of the question does not therefore appear desirable as it would reduce the increase in respect of contributions during the qualifying period

In practice, cases may frequently arise in which the qualifying period giving the right to a pension payable by a certain institution is only completed by means of the totalisation of insurance periods When the pension is defined as in example (1), the elements which should be reduced and those which should not be reduced can be determined exactly. When, however, as in example (2), the basic pension is fixed as at the end of the qualifying period, a special rule is necessary in order to calculate the pension corresponding to the qualifying period As regards that period, it is necessary to allocate either the basic pension with a reduction corresponding to the increment allowed for insurance periods subsequent to the qualifying period, or a proportion of the basic pension which corresponds to the relation between the periods spent in insurance and the total qualifying period. In the Government's view, it is desirable in both cases to effect the reduction mentioned in question 12 *(b)* so that the total pension calculated immediately before the completion of the qualifying period shall not be higher than the total pension due after the completion of the qualifying period

In the case of insurance lasting for a total period of 8 years, four of which are spent with one and four with the other institution, the pension would be calculated as follows according to the first example 4/8 × 20 per cent + 4 × 2 per cent = 18 per cent of the earnings for which each institution is responsible or 36 per cent in all, corresponding to 8 years of contribution According to the second example, the reduced pension due from each institution would be, according to the Government's first suggestion, 30 per cent — 2 per cent = 28 per cent., or according to the second suggestion, a reduction in the proportion of 4/5 ×30 per cent = 24 per

cent If the pension were not subject to the reduction mentioned in question 12 *(b)*, the total pension payable by the two institutions would be 56 or 48 per cent respectively, and if that reduction were effected the total pension would be 28 or 24 per cent respectively Each institution would, after 5 years' contributions, have to pay under the first example, 5/10 × 20 per cent + 5 × 2 per cent = 20 per cent, i e 40 per cent in all, corresponding to the pension for 10 years' contributions According to the second example, also for 5 years' insurance, the result would be 5/10 × 30 per cent. = 15 per cent, i e 30 per cent in all, which is less than the non-reduced pension for 8 years' contributions

If the pension acquired from two institutions paying pensions of an equal amount is to be equal to the pension acquired in respect of the same period from a single institution, it is necessary to define further the clause corresponding to question 12 *(b)* in order to make it clear that in the case of a basic pension which is not fixed at the beginning of insurance but in regard to a later period (e g the time when the qualifying period is completed) a preliminary reduction should be made in order to make up for the increment in relation to the period in question (e g qualifying period), such preliminary reduction being effected on the basis of the increment laid down for the period subsequent to the completion of the qualifying period When that reduction had been made, the basic pension would be obtained, and this in turn would be subject to reduction in accordance with the provision laid down in question 12 *(b)* If this sort of fictitious increase in the pension corresponding to the qualifying period is introduced, the second example becomes the same as the first and all difficulties are removed

The Government also desires to mention certain doubts that may arise in the application of the provisions corresponding to question 12 when a pension system does not provide for annual increments but for a number of fixed rates varying with the length of insurance Thus, the Yugoslav Workers' Insurance Act only provides two pension rates 24 per cent after four years and 36 per cent after ten years, and no other increases are provided It is therefore necessary to consider whether the pension corresponding to 36 per cent of earnings which is due after ten years should be regarded as the basic pension and should be reduced proportionately to the period of insurance or whether the 24 per cent pension should be taken as the basic pension and a non-reducible increment of 12 per cent of earnings, corresponding to six years' insurance, should be assumed

It is thought better to adopt the first solution, i e a basic pension of 36 per cent of the earnings, to be reduced in proportion to the time spent in insurance When there is no definite link between the period of insurance and the corresponding increase of the pension, it is necessary to make a reduction in the amount due Such a reduction is justified in particular in the case of pensions which would be increased above the maximum rate allowed in the country as the result of pensions paid by the institutions of another country

It is not thought necessary to give any fuller explanations, but it is desirable that, in order to avoid possible disputes, the body referred to in Question 42 should be empowered to give an authoritative interpretation in cases of this kind

**14. Do the rules suggested in paragraphs *(a)* and *(b)* of Question 12 appear to you to be likewise applicable to subsidies, supplements or allowances which are payable wholly or mainly out of public funds ?**

**If not, what other rules do you propose to apply to such subsidies, supplements or allowances ?**

AUSTRIA

14 The reply is in the affirmative The Government considers, however, that the rules given in 12 *(a)* and 12 *(b)* should be applied quite generally to the subsidies, supplements or allowances indicated regardless of whether these subsidies etc are wholly, or mainly, or only in small part payable out of public funds The restriction suggested would be apt to lead to confusion

BELGIUM

14 The reply is in the affirmative

BRAZIL

14 No, benefits or fractions of benefits payable wholly or mainly out of public funds should be left completely outside the international scheme of maintenance of rights

BULGARIA

14 No The international scheme for the maintenance of rights should not apply to benefits or fractions of benefits payable wholly or mainly out of public funds

CHILE

14 Insurance funds cannot undertake obligations incumbent solely upon public funds

CHINA

14 The rules suggested in Question 12 appear to be likewise applicable to subsidies, supplements or allowances which are payable wholly or mainly out of public funds

FRANCE

14 As has been stated in the reply to Question 1, it should be left to special treaties to effect the assimilation of nationals of the contracting States in respect of advantages derived from States subsidies, supplements or allowances payable out of public funds

HUNGARY

14 The Government is of opinion that there is no objection to the rules suggested in 12 *(a)* and *(b)* being applied to subsidies, supplements, or allowances payable wholly or mainly out of public funds Public funds would thus be regarded in the same way as contribution reserve funds

ITALY

14 The rules for sharing benefit liability are also applicable to that part of benefit which is payable out of public funds or out of contributions received from the latter In other words, the share borne by the public authorities should be related to the insurance periods recognised and should therefore be subject to the same reductions as benefits or benefit components which depend on these periods

If the share which is payable out of public funds consists of a fixed component, it might be calculated in the manner described in clause *(b)* of Question 12 If, on the contrary, it consists of a contribution or increments which vary with time spent in insurance, it might be calculated in accordance with clause *(a)* of Question 12 Nevertheless, what has been said in reply to Questions 12 and 13 suggests that the solution proposed above would also be applicable in this case.

LUXEMBURG

14 It does not seem desirable to apply these rules to the subsidies, supplements or allowances payable out of public funds Such subsidies, etc should remain entirely a charge on the country of residence

NETHERLANDS

14 The rules suggested in Question 12 *(a)* and *(b)* might also be applied to subsidies, supplements, etc Where the supplements etc vary in accordance with the contributions paid, a reduction proportionate to the contributions paid should be effected Where the supplements vary in accordance with the time spent in insurance, a reduction based on the length of that time should be effected

POLAND

14 The reply is in the affirmative The Government does not propose the application of any other rules to subsidies, supplements or allowances payable out of public funds.

SPAIN

14 Yes, the Government considers that there will be no difficulty in applying the same rules to supplements paid by the State As a general rule these consist either of a sum proportional to the contributions paid in to the insured person's account or of a fixed sum independent of the amount of his contributions In each of these cases there will be differences in the methods of application, but in both cases the rules indicated can be successfully applied

SWEDEN

14 In a certain number of cases, no doubt, it would be impossible to apply the rules formulated in Question 12, but it would appear to be possible to adopt the principle embodied in those rules as the guiding principle for the calculation of subsidies, etc , in cases where there is a right to benefit

YUGOSLAVIA

14 The Government considers that the rules suggested in 12 *(a)* and *(b)* should be likewise applicable to subsidies, supplements or allowances which are payable wholly or mainly out of public funds

These rules should also apply to non-contributory pensions, the time of residence or employment in the country in question being assimilated to periods spent with an insurance institution

**15. Do you consider that reduction according to paragraph *(b)* of Question 12 should be effected where the claimant is entitled to benefit from only one institution and is so entitled only as the result of the totalisation of insurance periods ?**

AUSTRIA

15. The reply is in the affirmative.

BELGIUM

15. The reply is in the affirmative

BRAZIL

15 The reply is in the affirmative

BULGARIA

15 The reply is in the affirmative

CHILE

15 The reply is in the affirmative

CHINA

15 The Government considers that there should be no reduction of the benefit due

FRANCE

15. Same reply as to Question 3

## Hungary

15 It seems desirable to apply the restriction mentioned in the reply to Question 12 *(b)*

## Italy

15 This question deals with cases in which the totalisation of insurance periods entitles the claimant to benefit from one institution alone, but not from the others, owing to his not having completed the qualifying period (Question 6)

Here again it seems that the institution which is liable should be allowed to reduce the benefit, since the minimum number of insurance periods required to justify the claim has only been arrived at by totalisation and has not in any event been spent in the insurance of that institution If liability for the full amount of benefit were maintained, a privileged situation would arise and an excessive burden would fall on the institution

If, on the contrary, the number of periods spent under the scheme of that institution is sufficient for qualification, it seems that pension should be paid without the reduction contemplated in Question 12, since the condition prescribed by the law which applies has been fulfilled, and there is no need to know whether the claimant has been insured in other countries or for how long a period Nor can it be argued that the burden on the institution concerned has been increased, since this burden is the same as that which might be incurred in respect of an insured person, of the same age and in the same occupation, who had been insured for the same period with that institution alone

Moreover, Question 18 below contemplates a protective clause, which, if it were accepted, would raise the aggregate amount of benefit to that payable by any one institution in respect of the insurance periods spent under its own scheme If the clause were given a general interpretation, it would apply in this case as well, since the end in view would be the same

A more important point is that Question 15 only considers the case of a single institution, whereas it would be consistent to apply the same principle in cases where a claim to benefit from two institutions could be based on the totalisation of periods spent under their schemes and only on such totalisation Each institution would then apply the reduction to its own share, and would take all the periods into account If on the other hand, the number of periods spent under the scheme of one institution were sufficient for qualification either *per se* or together with the periods spent under the scheme of the other institution or institutions liable, reduction might be limited, that is, based on the total number of periods less those spent under the schemes of institutions the legal conditions of which, in respect to the qualifying period, had not been fulfilled

It might also be found that in cases where the principles laid down in paragraph *(b) (ii)* of Question 4 and paragraph *(a)* of Question 8 applied, one or more institutions were not liable owing to the fact that the time limit allowed under their law for the maintenance of rights in course of acquisition had been exceeded Since in such cases totalisation is not allowed for the purpose of reckoning

the qualifying period it cannot be allowed for that of calculating benefit and, for reasons similar to those which apply to the qualifying period, there should be no reduction

LUXEMBURG

15. Reduction should not be effected when the claimant is entitled to benefit from only one institution

NETHERLANDS

15 Reduction should also be effected in this case The only case in which reduction should not be effected is when the worker, without any totalisation of contributions or periods and consequently without having to invoke the provisions of the proposed Convention (except to the extent that the Convention is applicable to him), is entitled to claim a pension under the law of the particular country in virtue of his being insured and having paid contributions in that country

POLAND

15 The reply is in the affirmative

SPAIN

15 Yes; the right to benefit having been acquired as the result of totalisation, the institution which will have to pay the benefit because the conditions required by the law under which it works have been fulfilled, will always be able to claim the reduction

SWEDEN

15 The reply might perhaps be in the affirmative

YUGOSLAVIA

15 The reduction is justified in this case as it is intended to prevent a person who emigrates from one country to another from receiving, owing to the fact of his migration, twice the sum which he would receive if he had remained in the same country. The reduction provides some degree of compensation to an institution which only pays pensions owing to the fact of totalisation Such compensation is due to the institution whenever there is totalisation, even if that institution is the only one which is liable for a pension as the result of totalisation

If, however, one institution only is liable for benefit without totalisation affecting the question, the protective clause mentioned in Question 18 applies, and in that case there should be no reduction.

**16. Do you consider that the last institution with which the insured person is insured should be empowered not to apply the reduction rules suggested in paragraph *(b)* of question 12**

**where, on the happening of the event insured against, the claimant is entitled to the maximum pension in virtue of those periods only which he has spent with that institution ?**

AUSTRIA

16 The last institution with which the insured person is insured would be entitled not to apply the reduction rules suggested even if a provision to that effect were not contained in the Convention It is not understood, therefore, why such a provision should be included

BELGIUM

16 The reply is in the negative It should be observed that every insured person is entitled to receive from the insurance institution of a country the maximum pension which he has acquired with that institution, without the institution concerned being allowed to take advantage of the fact that the insured person is already in receipt of a pension in virtue of the national law of another country, or payable by another insurance institution, for the purpose of curtailing or reducing the benefit payable by it

BRAZIL

16 The reply is in the affirmative

BULGARIA

16 The reply is in the negative

CHILE

16 The reply is in the affirmative

CHINA

16 The Government considers that there should be no reduction of the benefit due

FRANCE

16. The reply is in the affirmative

HUNGARY

16 It seems desirable that each insurance institution should be expressly given the right to award the maximum pension due under the law of its own country The only liability to be imposed on another insurance institution, however, should be the payments for which it is liable under the law of its own country and the general provisions of the Convention

ITALY

16 The option suggested in Question 16 can only arise in cases where the law provides for a fixed pension which is independent of the contribution period Since, in each case, what is proposed

is only an option, which, if exercised, would be to the advantage of the insured migrant, the Government is in favour of inserting this provision in the international Convention, on the understanding, however, that the maximum pension paid by the last institution should be increased by the proportional amounts payable by the other institutions

LUXEMBURG

16 There is no objection to this power being given.

NETHERLANDS

16 The reply to this Question has already been given above (see the reply to Question 15, page 57) In the view of the Netherlands Government, however, the question does not arise if there is a claim in these circumstances upon the " last " institution with which the claimant is insured No reduction should be effected when the claimant is entitled to the maximum pension without any totalisation and without invoking the provisions of the Convention except those dealt with in Question 3.

POLAND

16 The Government does not consider it desirable to adopt such a proposal internationally, even in optional form Apart from the maximum pensions which they would receive from the State in which they were last insured, workers insured successively in several States would obviously have a right to benefits, calculated in conformity with the rules proposed in Question 12, from the institutions of the other States , such a method of regulating their rights would perhaps result in rather too great an advantage for this category of insured persons It is not necessary to provide that an insurance institution should bear the cost of the total maximum pension (not reduced in conformity with the rules laid down in Question 12) merely because it was the last institution with which the worker was insured The protection provided for the worker under Question 18 appears to be entirely adequate Moreover, it would be difficult to decide what constitutes a maximum pension in view of the differences in national insurance laws It would, finally, be difficult to agree to the principle that the non-reduction of benefits should be applied exclusively to the maximum pension and not to benefits below that level

SPAIN

16 The reply is in the affirmative, since it will thus be possible to check the intervention of two or more institutions The non-application of the reduction should not be regarded as merely optional but should be obligatory, once the claimant has acquired a right to the maximum benefit from the last institution with which he was insured Any other arrangement might result in the claimant receiving only a part of the rights conferred by the country in which he last resided without this loss being compensated by the rights conferred in other countries

SWEDEN

16 The reply is in the affirmative

YUGOSLAVIA

16 The possibility mentioned in this question is not in agreement with the general rule laid down in Question 12 It does not appear to be necessary in view of the protective clause mentioned in Question 18 Nevertheless, as it is open to any institution to pay higher benefits than those which it is obliged to pay, provided that this is not contrary to other interests, the Government is not opposed to the possibility mentioned in Question 16 if other countries expressly request that this should be allowed

**17. *(a)* Do you propose to permit that periods which in the aggregate are below a certain minimum should not entail liability for benefit on an institution or institutions which would otherwise be liable ?**

***(b)* If so, must this minimum have been spent**

***(i)* under a particular national scheme of invalidity insurance, of old-age insurance, or of widows' and orphans' insurance ?**

**or *(ii)* entirely under a particular institution ?**

***(c)* How do you propose to fix this minimum ?**

***(d)* Further, do you propose that it should be laid down that the reduction rule suggested in clause *(b)* of Question 12 is not to be applied by any of the other institutions concerned in respect of periods which in the aggregate are below the minimum fixed and which, in accordance with clause *(a)* above, do not entail liability for benefit ?**

AUSTRIA

17 *(a)* The reply is in the affirmative

*(b)* *(i)* The reply is in the negative

*(ii)* The reply is in the affirmative

*(c)* 52 weeks

*(d)* The reduction rule should not be applied

BELGIUM

17 Here again a distinction should be made between the national laws which are founded on a system of capitalisation and those founded on a system of distribution

In the first case, the question falls

In the second case, see reply to Question 10.

BRAZIL

17 *(a)* The reply is in the affirmative

*(b)* *(i)* Yes, under a particular national scheme of invalidity insurance, of old-age insurance, or of widows' and orphans' insurance

*(c)* The Government proposes that the minimum should be fixed at one year's contributions

*(d)* The reply is in the affirmative

BULGARIA

17 *(a)* The reply is in the affirmative

*(b)* Entirely under a particular institution *(ii)*

*(c)* An insurance period of two years with at least 52 contributions paid

*(d)* The reply is in the affirmative

CHILE

17. *(a)* The reply is in the affirmative

*(b)* Under a particular national scheme

*(c)* Two years' contributions

*(d)* The reply is in the affirmative

CHINA

17 No, the Government does not propose the exception of short periods

FRANCE

17 Same reply as to Question 3

HUNGARY

17 *(a)*, *(b)* and *(c)* For the purpose of fixing the amount of benefits, the method suggested in Question 10 should be applied

*(d)* It would be desirable to provide that the reduction rule indicated in Question 12 *(b)* should not be applied by any of the institutions concerned in respect of periods which are below a minimum

ITALY

17 The purpose of Question 17 is to avoid, for the sake of convenience, apportioning liability in small amounts, the periodical transfer of which to the institution in the insured person's country of residence would be onerous It is to be observed that the administrative difficulty might be obviated by making compulsory in these special cases the optional procedure contemplated in Questions 24 and 32, that is the transfer, in final settlement, of a capital sum

In any event, this difficulty might arise, whereas the other difficulty which is alleged, that of having to keep an account of

small insurance periods for a considerable number of years, does not seem to carry as much weight The Government is therefore in favour of including in the Convention a provision to the effect that periods which are below a certain minimum should not entail liability for benefit *(a)*

This minimum *(b)* should have been spent under a particular national scheme of invalidity, old-age or widows' and orphans' insurance and not entirely under a particular institution The latter rule, if adopted, would discriminate unfairly between countries in which these forms of insurance are centralised in a single institution and those in which there are many different institutions Where this is the case, brief periods of insurance under each institution may add up to a considerable period under a single legislation. Application of the rule would entail loss of benefit by the insured person and increase the burden on the other institutions.

It does not seem possible to fix a definite term (as in the example which the draft Questionnaire approved by the Conference contains) below which insurance periods would not be taken into account for the purpose of apportioning liability The significance of a one-year period will be very different according as to whether three or five years are necessary for qualification It would seem more correct to fix a minimum which would be proportionate to the total of the periods under consideration (for instance one twenty-fifth or one thirtieth) The advantage of this would be that the minimum would always bear the same ratio to the benefits payable by the other institutions

The question contained in paragraph *(d)* covers two cases in which various solutions may be applied If the claim to benefits is based on the totalisation of all the periods, including even those short periods which are not taken into account for the purpose of apportioning liability, it seems, in view of what has been said in reply to questions 10 and 15, that these short periods should also be counted when the reductions to be applied to benefits payable by other institutions are being calculated If the claim to benefits can be established without regard to these short periods and if only one institution remains liable, there should be no reduction If several institutions are liable, apart from those under which the short periods have been spent, the reductions should be based on the total of the periods, excluding short periods.

### Luxemburg

17 Periods which in the aggregate are below a minimum of fifty-two contribution weeks in the same national scheme of insurance should not entail liability for benefit on institutions which would otherwise be liable The reduction rule in clause *(b)* of Question 12 should not be applied by the other institutions concerned to such periods

### Netherlands

17 *(a)* The reply to this Question is in the negative The suggestion in the Question is contrary to the fundamental principles of the scheme

*(b)* In the event of such a provision being included in the Convention, rule *(i)* would be preferable

*(c)* The minimum should be very short

*(d)* In the event of its being decided that the minimum period should not give a claim to benefit, periods which in the aggregate are below the minimum and which do not give any title to benefit should also be left out of account in making the calculation under 12 *(b)*

POLAND

17 *(a)* The reply is in the affirmative

*(b)* For the reasons given in the reply to Question 10 *(b)* the Government is unable to accept any other proposal than that contained in *(i)*

*(c)* The Government proposes six months as the minimum period

*(d)* The reply is in the affirmative.

SPAIN

17 *(a)* The reply is in the affirmative, in conformity with the arrangement already recognised in international treaties

*(b)* The Government prefers the arrangement indicated in point *(i)*.

*(c)* The limit should be higher than that fixed for totalisation in accordance with Question 10 *(c)* It might be fixed at 150 contribution days or 26 contribution weeks under the same national scheme of insurance

*(d)* The reply is in the negative

SWEDEN

17 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative to *(i)* and in the negative to *(ii)*

*(c)* (No reply is given)

*(d)* The reply is in the affirmative

YUGOSLAVIA

17 The periods excluded from totalisation in accordance with the reply to Question 10 do not entail liability for benefit from the institution with which they were spent and, accordingly, should not entail the reduction mentioned under 12 *(b)*, since that reduction only comes into play in so far as there is totalisation

The minimum periods should be those mentioned in connection with Question 10

**18. *(a)* Do you consider that a beneficiary entitled to benefit in at least two States Members participating in the international scheme should be guaranteed a total benefit equal to the benefit which he would obtain in respect only of the periods spent with a particular institution ?**

***(b)* If so, do you propose that any complementary benefit due as a result of the operation of this guarantee should be due from that institution ?**

***(c)* Do you agree that, where several institutions are concerned, the complementary benefit should be reckoned according to the amount of the highest complementary benefit which would be due from any one of these institutions, the liability for it to be distributed among them in proportion to the complementary benefit which would have been due from each individually ?**

***(d)* If the reply to *(c)* is in the negative, what other rules do you propose for reckoning the complementary benefit and distributing liability for it ?**

AUSTRIA

18 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative

The Government observes that in spite of certain objections of principle it has replied in the affirmative in order to facilitate the adoption of a Convention

BELGIUM

18 *(a)* The reply is in the negative

BRAZIL

18 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative

BULGARIA

18 *(a)*, *(b)* and *(c)* The replies are in the affirmative

CHILE

18. *(a)*, *(b)* and *(c)* The replies are in the affirmative

CHINA

18 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative

FRANCE

18 Same reply as to Question 3

HUNGARY

18 *(a)* A beneficiary entitled to benefit in at least two States Members adopting the international scheme on the basis of periods spent under the two insurance institutions should be guaranteed a total benefit at least equal to the benefit which he would obtain in respect only of periods spent with one institution

*(b)* In the event of the total benefit payable under the Convention by two or more insurance institutions being less than the sum which would be paid by the institution of one of the States Members in respect of the period spent with it, the difference should be borne by the institution which would be obliged to pay the highest benefit

*(c)* The Government agrees with this suggestion

ITALY

18 The purpose of the protective clause is to guarantee the beneficiary a pension not less than that to which the periods spent with a single institution would entitle him This clause should be included in the Draft Convention since it is to the advantage of the beneficiary and would apply particularly to cases where the law makes the pension wholly independent of the insurance period *(a)*

The difference between the aggregate pension for which all the institutions concerned are together liable and the amount which the insured person would be entitled to claim from one of them should be payable by that institution *(b)* Even though the institution in question will be paying more than its share of the common liability, its own burden will be lightened by the contributions of the other institutions These on the other hand, were they to increase their share, might go beyond their legislative provisions and incur a heavier burden than they have to bear in respect of other insured persons

When several institutions *(c)* are in the same position, that is, when each of them is liable, in respect of the insurance periods spent with it alone to pay a higher pension than the aggregate for which they are jointly liable, and when the amounts for which they are individually liable vary, the highest complementary benefit should apply This complementary benefit should be shared among the institutions in question, but the amounts so payable by each should be in relation to the individual complements To make this clearer, it would be well to specify that complementary benefit should be shared in the proportion of the complement due by each institution under its own law to the total of the complements due by the several institutions

LUXEMBURG

18 The inclusion of a protective clause as indicated in *(a)*, *(b)* and *(c)* is desirable

NETHERLANDS

18 Regard must be had to the systems dealt with in Question 12 in replying to this question The principle has been adopted that each institution will determine, in accordance with its own law, whether the conditions for the payment of benefit have been fulfilled and will then calculate the benefit and pay it Totalisation of periods of insurance or of contributions is effected for the purpose of establishing the right to benefit Totalisation is not effected for the purpose of calculating the amount of a pension The calculation of the amount of a pension is made in accordance with the law of the country in which the institution is established, a reduction being effected in accordance with the scheme where necessary The purpose of a protective clause is to prevent the application of the Convention being detrimental to the migrant The proposal in this question appears to be based on the method of calculation of benefit dealt with in Question 12 *(a)* Many bilateral treaties contain a protective clause to meet such cases, and if the method of calculation dealt with in Question 12 *(b)* is to be applied, a protective clause seems to be very desirable

If benefit is calculated on the basis of the rule mentioned in Question 12 *(a)* no guarantee is necessary The reply to Question 18 is therefore in the negative if benefit is calculated according to the rule given in 12 *(a)*, and in the affirmative if benefit is calculated according to the rule given in 12 *(b)*

POLAND

18 *(a)* The reply is in the affirmative In principle, the international scheme should not place the persons to whom it applies in a situation so much less favourable than their situation would be under national law that they would obtain under the terms of the Convention a total benefit less than they would obtain from a particular institution under national law

*(b)* The reply is in the affirmative.

*(c)* The reply is in the affirmative

SPAIN

18 *(a)* The Government's reply is in the affirmative, in conformity with the reply given to the questionnaire of 1932.

*(b)* The Government replies in the affirmative for the same reason The country which has to pay the complementary benefit is compensated therefor by the advantage it derives from the reduction rule

*(c)* The reply is in the affirmative if the cost of the complementary benefit is equitably distributed among the institutions without prejudice to the insured person

SWEDEN

18 *(a)* The reply is in the affirmative

*(b)* (No reply is given.)

*(c)* The reply is in the affirmative.

YUGOSLAVIA

18 *(a)* The Government considers that the protective clause is undoubtedly necessary in order to ensure that the Convention may in no case be detrimental to the interests of insured persons

*(b)* The complementary benefit due as a result of the protective clause should be due from the institution which would be liable for the highest benefit if the Convention did not exist This does not constitute any additional burden on the institution which is liable for the complementary benefit as, owing to totalisation, it is in all cases relieved of the burden of the benefits due from the other institution

*(c)* The Government agrees to the proposed procedure for the calculation and distribution of the complementary benefit in cases where several institutions are concerned

The provisions referred to in 18 *(c)*, however, only guarantee the highest benefit which would be due to the insured person if totalisation as provided for in the Convention did not exist Where, however, several institutions are concerned, it may happen that totalisation, if restricted to the time spent in some of these institutions, would give a higher total benefit than that resulting from the totalisation of all the periods of insurance spent in all the institutions, and also higher than the rights acquired with the institution which would in any case be liable apart from the Convention In that case, it would be more favourable to the insured person, in totalising the time spent in insurance and calculating benefits, only to count those insurance periods which entitle him to the highest total benefit The institutions which would in this way be left outside the combination would simply be required to pay the normal share of the total benefit to which the insured person would be entitled apart from the protective clause, and the additional amount would be divided among the different institutions whose periods of insurance had been taken into account in determining the highest benefit In other words, the normal proportion to be paid by each institution would be calculated first, all insurance periods being taken into account The total benefit and the part of that benefit due from each institution would then be calculated according to all the different possible combinations of two or more than two of the periods spent in insurance, and the combination which gave the highest total benefit would be selected The normal share of the institutions with which the periods of insurance not included in the selected combination had been spent would then be used for a proportional reduction of the difference between the share of each institution according to the combination selected, and the normal share of the other institutions included in the combination

The protective clause should also be defined in such a way as to cover the case in which one institution is obliged to pay a pension,

while another has to pay a lump sum It would be necessary to calculate the value of the lump sum in terms of a pension, and for that purpose it would be possible to adopt either a fixed method of calculation, the pension being regarded as equal to one-tenth of the lump sum for example, or a method of calculation taking into account the age and status of the beneficiary In any case, the method of calculation should be the same for all States and should be independent of the technical basis of national legislation The method of calculation should be defined in the Draft Convention itself

**19. *(a)* Do you propose to give power to limit the total benefit awarded by the institutions of two or more Members participating in the international scheme to the amount of the benefit which would be due in respect of all the periods which are to be counted from the institution having the most favourable law ?**

***(b)* If so, should any reduction on this account be effected proportionally on each portion of the total benefit ?**

AUSTRIA

19 *(a)* The reply is in the negative The Government considers that it would in many cases be impossible to decide which of the national laws concerned was the most favourable and that it would, therefore, hardly be possible in practice to apply the provision

BELGIUM

19 *(a)* The reply is in the negative Every insured person should enjoy the rights acquired in virtue of each of the national laws to which he has been subject, provided that the total amount of the benefits thus received be not higher than the maximum fixed by the most favourable law

BRAZIL

19 *(a)* and *(b)* The replies are in the affirmative.

BULGARIA

19 *(a)* and *(b)* The replies are in the affirmative

CHILE

19 *(a)* and *(b)* The replies are in the affirmative

CHINA

19 No , the Government does not propose that power should be given to limit the total benefit

FRANCE

19 *(a)* The reply is in the affirmative

*(b)* The reduction to be effected should be settled by agreements between the parties

HUNGARY

19 *(a)* The limitation mentioned in this question should be provided for.

*(b)* The reductions should be effected proportionally on each portion of the benefit

ITALY

19 The limitation of benefits to a maximum corresponding to the most favourable law would entail a comparative analysis of the various legislations and an investigation, which would be anything but simple, of actuarial calculations It should not be supposed that because the amount of one pension is less than that of another, the corresponding law is necessarily less favourable For instance if, in case of death, there is a reversion of the pension either wholly or in part, this additional advantage undoubtedly affords compensation for a difference in the amount

The Government is therefore not in favour of the clause contemplated in Question 19.

LUXEMBURG

19 The total benefit awarded should be limited in accordance with the rules indicated in *(a)* and *(b)*

NETHERLANDS

19 The reply is again in the affirmative if the calculation is made in accordance with the rule given in 12 *(b)*

POLAND

19 The reply is in the negative In practice the possibility of effecting a reduction on the higher limit would be very slight. The investigation of each individual case for the purpose of determining whether such a situation arises would mean an undue increase in the administrative work imposed upon the insurance institutions as a result of the application of the international scheme It is on this account that bilateral agreements do not often provide for restrictions of this character

SPAIN

19. *(a)* and *(b)* The reply is in the affirmative on both points, which are designed to fix a limit to the guarantee proposed in the previous question Such a limit is provided for in almost all the treaties and in particular in the agreement concluded between Spain and France (Article 9, section 2)

SWEDEN

19 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

YUGOSLAVIA

19. The reply is in the negative Provisions of this kind would be liable to give rise to a number of difficulties.

**20. *(a)* Do you consider it desirable to entrust the institution of the place of residence with the provision, for persons who, on the ground of invalidity, would be entitled to claim a pension, of treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity ?**

***(b)* If the reply to *(a)* is in the affirmative, do you consider that the other institution or institutions concerned should share in the cost of treatment and care and, if so, according to what rules ?**

AUSTRIA

20 *(a)* The reply is in the affirmative in so far as the treatment given is for the relief or cure of an invalidity which already exists

*(b)* The reply is in the affirmative with the above reservation The cost should be shared in proportion to the pensions payable by the institutions concerned

BELGIUM

20 *(a)* This question falls in so far as old-age and widows' and orphans' insurance are concerned As regards invalidity insurance, the reply is in the affirmative

*(b)* The question should be regulated by separate agreements.

BRAZIL

20 *(a)* No , the international scheme should leave on one side the question of medical benefits, which are not obligatory under the legislation of most countries Moreover, it would be very difficult to lay down general rules for the apportionment of expenses between institutions

BULGARIA

20 No The international scheme should not deal with the question of medical benefits which in the majority of national legislations are not compulsory Moreover it would be very difficult to lay down general rules for the distribution of the cost involved among the institutions concerned

CHILE

20. *(a)* Yes, on condition that the institutions are under obligation to provide services of this kind

*(b)* The reply is in the negative

CHINA

20. *(a)* It is necessary to entrust the institutions of the place of residence with such provision

*(b)* They should share, as a rule, in proportion to the amount of the benefit payable by each institution

FRANCE

20 *(a)* The reply is in the affirmative

*(b)* The question of the participation of the other institutions concerned in the cost should be determined by agreements to be concluded between the parties

HUNGARY

20 *(a)* It would be expedient to entrust medical treatment and care to the institution of the place of residence of the beneficiary

*(b)* It seems desirable to make it a rule, which would in general be binding, that the other institutions concerned should bear a share (possibly on a proportionate basis) of the cost of treatment and care The extent and methods of this participation should be regulated by bilateral treaties to be concluded between the States concerned.

ITALY

20 All legislations do not make equal provision for the prevention and cure, by medical treatment, of invalidity Nor do all institutions apply such provisions in the same way Accordingly it would be difficult to entrust this task, in an absolute sense, to the institution of the place of residence

Treatment for the prevention of invalidity raises another difficulty Such treatment takes place during the period of insurance and there is a direct connection between it and the extent to which legislative provision is made for sickness insurance When the person who is insured against invalidity is at the same time compulsorily insured against sickness, prevention is made easier and its cost is largely borne by the sickness insurance fund Where, on the contrary, there is no compulsory sickness insurance the whole burden falls on the invalidity insurance fund

The fact that the financial interest of the institutions varies with their share of liability for benefit raises yet another difficulty Clearly, if the institution of the place of residence has only a very small share in respect of a short period of insurance, its interest in treatment for the prevention or cure of invalidity will also be limited.

The Government is therefore of opinion that the reference to medical treatment should be made in somewhat general terms,

without going into details and leaving an opening for special agreements between the interested parties In any event, even if in principle the task is entrusted to the institution of the place of residence, the right of the other institutions to take action if and when they think it necessary should be recognised

The cost of treatment should, it is thought, be shared by all the institutions concerned. It should be added, however, that when existing invalidity is to be cured, there is no difficulty in charging costs on the basis of the periods of insurance spent with each institution or, where possible, in proportion to the share of liability for benefit When, on the other hand, the object is to prevent invalidity which may occur, but has not yet done so, and the length of the total period of invalidity and the amount of the final pension are, therefore, unknown, some other basis will have to be adopted, such. for instance, as the number of insurance periods already completed

The sharing of costs should be made compulsory even in cases where treatment has been provided at the request of one institution alone

LUXEMBURG

20 Preventive or curative treatment should be accorded by the institution of the country of residence

As the allocation of the expenses of such treatment might give rise to administrative charges out of proportion to the sums involved, sharing of the expenses should not be required.

NETHERLANDS

20 Netherlands legislation does not give insured persons a *right* to the medical treatment and care dealt with in this Question In any event the scheme under consideration ought not to give a *right* to such treatment and care It would be preferable to leave the question of medical treatment and care on one side The circumstances in which such treatment is granted are quite different in different countries. In one country treatment may be furnished at a much earlier period than in another Care must be taken to ensure that the institutions of a country where treatment is not provided under national legislation should not be obliged to pay for treatment given in another country Each institution ought to be left free to decide whether or not it wishes to provide medical treatment and the cost of such treatment should be borne by itself Sharing of the cost between institutions of different countries should be ruled out

POLAND

20 The Government, while considering it desirable that some arrangement should be made in regard to these benefits, and being of opinion that such benefits should be provided in the first place by the institution of the place of residence of the person concerned, does not think it possible to deal with this question in the international agreement owing to the technical difficulties connected with the distribution of the costs involved among the institutions concerned On the other hand, a Recommendation could be adopted, separately from the Convention, advocating bilateral

agreements to deal with this matter The Government would not oppose the adoption in the Recommendation of the proposals regarding the provision of treatment and care contained in Question 20 , the Recommendation should, however, provide that the sharing of the costs should be regulated by agreements between the Governments or institutions concerned

SPAIN

20. *(a)* The reply is in the affirmative for it would be neither equitable nor expedient to allow migrant workers to be deprived of the assistance of this kind which the insurance institutions provide for the general body of their members

*(b)* The reply to this clause also is in the affirmative, the best arrangement being that the cost should be distributed between the institutions concerned proportionally to the contribution periods spent by the insured person under each of them

SWEDEN

20 *(a)* The reply is in the affirmative

*(b)* In principle, the reply might perhaps be in the affirmative.

YUGOSLAVIA

20 The Government considers that the old-age, invalidity, and widows' and orphans' insurance institution of the place of residence should be responsible for treatment, provided that it gives such treatment to its own insured persons When that is not the case, but when a compulsory sickness insurance institution exists in the place of residence, preventive treatment should be entrusted to that institution

Any of the institutions concerned should be empowered to demand treatment, but treatment should only be given with the previous consent of the institution or institutions which pay the greater part of the total pension The cost of treatment should be borne by those institutions The consent of institutions which only pay a small proportion of the total pension, e g less than ten per cent , should not be necessary

The cost of treatment should, if invalidity is not prevented, be divided proportionally to the amount of the pension due If any institution is unable, owing to its regulations, to bear the cost of treatment, or has not given its consent to treatment, it should only bear the cost to the extent that the treatment in question has led to a reduction of the pension due to the insured person

The collaboration of the body mentioned in Question 42 is necessary in order to avoid disputes

SETTLEMENT OF CLAIMS

**21. Do you consider that claims for benefit under the international scheme should be submitted**

**(i) to only one of the institutions concerned (in particular to the institution of the country of residence) which would inform the others mentioned in the claim ?**

**or (ii) severally to each institution concerned ?**

AUSTRIA

21 (a) The reply is in the affirmative

(b) The reply is in the negative

BELGIUM

21 The insured person should be left free to decide, on the understanding, however, that the institution of the country of residence shall be ready to assist him if necessary

BRAZIL

21 (i) Yes, to the institution of the country of residence, which would notify all the other institutions mentioned in the claim

BULGARIA

21. (i) The reply is in the affirmative.

(ii) The reply is in the negative

CHILE

21. (i) To the institution of the country of residence

(ii) The reply is in the negative

CHINA

21 It should be submitted to only one of the institutions of the country of residence, which would inform the others concerned

FRANCE

21 Same reply as to Question 3

HUNGARY

21 The reception of claims for benefit and the fixing of the amount of benefit should be entrusted to the insurance institution of the claimant's country of residence It is therefore desirable to adopt the method indicated under (i)

ITALY

21 It is considered that claims which interest several institutions should be presented only to the institution of the country of residence for communication to the others mentioned, when that institution is liable for benefit in respect of a sufficient period of insurance When this is not the case, the claimant should apply to the last institution with which he was insured The claim should always mention all the other institutions

LUXEMBURG

21 Claims for benefit should be submitted to the institution of the country of residence, which will inform the other institutions

NETHERLANDS

21 Claims for benefit should be submitted to each institution concerned, that is to say, to each institution from which a benefit is claimed The reply is therefore in the affirmative to *(ii)*

POLAND

21 Method *(i)* is preferred, as being simpler and more advantageous for the insured person, if it is decided that this question need not be dealt with in the Convention, method *(i)* should at any rate be incorporated in a Recommendation

SPAIN

21 The Government prefers the method indicated in point *(i)*, so that administrative complications may be avoided and the maximum of facilities afforded to the insured person

SWEDEN

21. The reply is in the affirmative to *(i)* and in the negative to *(ii)*.

YUGOSLAVIA

21 Claims for benefit should be submitted to the institution of the country of residence, which should inform all the other institutions If the country of residence has not adopted the international scheme, the claim should be made to the institution of the country in which the person in question was last insured

**22. *(a)* Do you consider that, when a sum has to be converted into the currency of another Member participating in the international scheme, it should be converted according to the relation between the two currencies in the foreign exchange market of the capital of the Member in whose currency it is expressed ?**

***(b)* Further, do you consider it desirable to specify the date on which the exchange rate for the purpose of conversion is to be ascertained ? If so, what date do you propose ?**

AUSTRIA

22 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative The Government suggests the first day of each calendar quarter

BELGIUM

22. *(a)* If the institution liable for benefit makes payment direct to the beneficiary, the latter should be allowed to decide whether the amount shall be paid in the currency of the country of the institution or in the currency of the country of his residence.

*(b)* The date of payment of the benefit

BRAZIL

22 *(a)* The reply is in the affirmative.

*(b)* Instead of fixing a definite date the Government considers it desirable, in order to avoid the possibility of a quite abnormal rate of exchange, to take as a basis the average rate during a given period preceding the date of the claim for benefit

BULGARIA

22 *(a)* The reply is in the affirmative. Each institution should pay in its own currency

*(b)* The reply is in the affirmative

CHILE

22 *(a)* Yes, the institution paying out the benefit being left free to accept foreign currency so far as the international exchange situation permits, in respect of countries that have adopted the international scheme.

*(b)* The reply is in the affirmative

CHINA

22 *(a)* The reply is in the affirmative

*(b)* It is desirable to specify such a date The Government proposes the date on which the benefit is paid.

FRANCE

22 Same reply as to Question 3

HUNGARY

22 *(a)* Effect should be given to the principle that so far as possible insured persons should not be placed at any disadvantage by reason of measures of compulsion applied on the international money market The method of conversion proposed in this question for the calculation of a sum in the currency of another Member is not open to any general criticism It would, however, be necessary to accept what are called the official rates of exchange established in certain countries instead of the rates quoted in the money market.

*(b)* It does not seem necessary to fix the date on which the exchange rate for the purpose of conversion is to be ascertained It would be desirable that the payment of benefits and the clearing arrangements between the insurance institutions should be effected as far as possible once a month on the same date

### Italy

22. Each of the institutions concerned may find it necessary, when calculating its share of the benefits payable, to convert into its own currency the share for which the other institutions are liable This occurs when the amount of complementary or maximum benefit is to be ascertained The Government is of opinion that the institutions which have such conversions to make should apply the exchange rate current in the capital of their country at the date when the claim was presented

### Luxemburg

22 The principle of conversion indicated in *(a)* should be adopted

Conversion should be effected at the rate prevailing on the day on which the insured person's claim is submitted

### Netherlands

22 From the commentary given on point 19 (page 22 of the Questionnaire) it appears that it is considered possible for an insurance institution to take account of benefits for which the institutions of other countries are liable when calculating the amount of the pension in accordance with the rule indicated in Question 12 *(b)*, and that in such a case conversion is considered to be necessary The rules in Question 12 *(b) (i)* and *(ii)*, however, relate only to *periods*, it would seem therefore that conversion would not be necessary for the reduction of the amounts dealt with in this question Moreover, it seems to be the intention that each insurance institution should calculate the amount of the pension to which the claimant is entitled in the currency of its own country It is therefore not quite clear why the question of fixing the rate of exchange should be raised Only in the event of the reduction contemplated in Question 12 *(b) (ii)* being calculated in proportion to the contributions paid to each insurance scheme would a rate of exchange for conversion be necessary In this case the reply to 22 *(a)* would be in the affirmative, and it would then be necessary to fix the date as at which conversion should be effected In the Government's view the date on which the claim is presented should also be the date for conversion

### Poland

22 It does not seem necessary to lay down in the Convention rules dealing with the conversion of sums due by virtue of the application of the Convention

SPAIN

22 *(a)* The reply is in the affirmative, in conformity with the rule generally adopted in treaties on this subject

*(b)* The Government replies in the affirmative, and suggests as the date for the purpose of the rate of exchange the first day of the quarter immediately preceding the making of the order for the payment of the benefit

SWEDEN

22 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

YUGOSLAVIA

22 Where payments are made directly it is not necessary to lay down a method of determining the exchange rate. The Government, however, agrees to the provisions suggested in Question 22 *(a)* in all cases where it is necessary to convert a sum into a foreign currency.

As regards the date on which the exchange rate for the purpose of conversion is to be ascertained, it would be necessary to state whether it is desired to take, instead of the exchange rate of the day, either the rate of the first day of the month or quarter, or a specified average rate, or the rate on the date on which a payment was made on account of another institution That date should be specified in connection with the application of the protective clause mentioned in Question 18 or the maximum limit for total benefit mentioned in Question 19, and it would be desirable for that purpose to take the date on which the pension was fixed or modified It would also be necessary to decide whether the relation between the two currencies existing at that time should remain unchanged or whether it should follow the fluctuations of the exchange rate. The revision of the rate would be desirable in the case of fluctuations of more than ten per cent , but it should only be carried out once a year according to the rate on 31 December.

**23. *(a)* Do you propose to provide for the grant by each institution, pending final settlement, of provisional benefit at least equal to that payable in virtue only of insurance periods spent under its own law ?**

***(b)* If so, do you consider that the grant of such provisional benefit should be :**

***(i)* obligatory for each institution ?**

**or *(ii)* optional ?**

AUSTRIA

23 *(a)* Each institution should grant provisional benefit. This should be calculated on the basis only of the periods taken into

account under its own law, and in the case of fixed benefits (benefit components) each institution should grant only a fraction corresponding to the number of institutions concerned (e g , in the case of three institutions, one-third) In this way the payment of too high a provisional benefit and claims for the repayment of large sums by the beneficiaries would be avoided

*(b)* The grant of such provisional benefit should be obligatory within the limits laid down in *(a)*

BELGIUM

23 *(a)* The reply is in the affirmative

*(b)* Optional *(ii)*

BRAZIL

23 The reply is in the affirmative

*(b) (i)* The reply is in the negative

*(ii)* The reply is in the affirmative

BULGARIA

23 *(a)* The reply is in the negative

CHILE

23 Provisional benefit should be optional for each institution.

CHINA

23 *(a)* The scheme should provide for the grant of such provisional benefit

*(b)* It should be obligatory for each institution

FRANCE

23 *(a)* The reply is in the affirmative.

*(b)* The reply is in the affirmative in the case of *(ii)*.

HUNGARY

23 *(a)* It would be expedient to provide for the payment by each institution of a provisional benefit at least equal to the benefit to which the claimant would be entitled in virtue of the insurance periods spent under the law of the institution of the place of residence

*(b)* The grant of this provisional benefit should be obligatory, as is suggested in *(i)*

ITALY

23 The purpose of the suggestion in Question 23 is to make provision to meet any delay which may occur in the final settlement of claims when several institutions are concerned

Assuming that the principle of a prompt provisional settlement is recognised on the lines suggested in Question 23, it may happen that such a settlement amounts in the aggregate to more than will finally be payable This may even occur frequently, for, inasmuch as several institutions are concerned, the maintenance of rights in course of acquisition and their subsequent settlement will reduce the amount payable by each

Take, for example, the case of pensions which include or consist exclusively of fixed components Each institution, calculating pension in respect of the periods it has recognised alone, will arrive at an amount which will certainly be equal to or greater and in no case less than its final share, unless the number of its own periods is insufficient to qualify the claimant

Seing how frequently the aggregate amount of the provisional benefits paid by the various institutions will be greater than that to which the insured person will finally be entitled, reductions will follow and he may even have to refund the difference As insured persons are not very competent in such matters, the advantage of the provisional settlement will clearly be cancelled by the anxiety and the moral depression to which it gives rise

The following compromise may permit of applying the principle in spite of this difficulty When legislative provision has been made for a component which varies with the time spent in insurance (clause *(a)* of Question 12) each institution shall pay provisional benefit in respect of the periods spent under its own law each institution which is liable to pay only a fixed benefit determined independently of time shall provisionally pay half the amount of such fixed benefit It may be assumed that, under this arrangement, the total payment will be slightly less than the final amount

Provisional settlement should be obligatory for each institution *(i)*

## Luxemburg

23 Provision should be made for the granting by each institution, on account, of provisional benefit at least equal to that payable by the institution in virtue only of periods spent under its own law

The granting of provisional benefit should be obligatory on the institution of the country of residence

## Netherlands

23 A provision of this kind should not be included in the Convention In the event of any institution desiring to grant provisional benefit, it should be at liberty to do so , but it is not necessary to specify this in the Convention

## Poland

23 *(a)* It does not seem necessary to deal with this question in a Convention It would be preferable to deal with it in a Recommendation

*(b)* In any event, it would not be possible to impose upon States an obligation to pay provisional benefits If each of the States were to pay, in conformity with the suggestion contained in 23 *(a)*, the benefit which an insured person could claim under national law, the aggregate of such benefits might, in many cases, exceed the amount of the benefits to which the claimants would be entitled under the international scheme if they had completed the qualifying period in several States and maintained their rights in course of acquisition

SPAIN

23 *(a)* The Government replies in the affirmative, so as to avoid any hardship upon the migrant

*(b)* The Government prefers the rule indicated under *(a)*, in accordance with which payment of a provisional benefit should be obligatory, since all that is required is to avoid the institution of the country of residence delaying grant of the provisional benefit until the other institutions concerned have paid the amounts due from them

SWEDEN

23 It is undoubtedly desirable that arrangements should be made to ensure the payment of provisional benefit at a reasonable rate

YUGOSLAVIA

23 The Government considers that it would be necessary to provide for the compulsory grant by each institution, pending final settlement, of provisional benefit at least equal to that payable in virtue only of insurance periods spent under its own law

## OPTIONAL PROVISIONS

**24. Do you propose to give power to an insurance institution to discharge its liability to the insured person and his dependants by paying to the institution which is thenceforward responsible for him, subject to agreement between the two institutions, the capital representing his rights in course of acquisition at the date of his departure ?**

AUSTRIA

24 The reply is in the affirmative provided that a legal basis is created therefor by an agreement to that effect between States which would safeguard the insured person from being accorded less favourable conditions than under the international scheme

BELGIUM

24 The reply is in the affirmative

BRAZIL

24. The reply is in the affirmative

BULGARIA

24 The reply is in the affirmative

CHILE

24 The reply is in the affirmative

CHINA

24 The reply is in the affirmative

FRANCE

24 The reply is in the affirmative

HUNGARY

24 The application of the method proposed would be desirable, since the transfer of capital sums would materially simplify the procedure for the payment of benefits As regards the detailed regulation of the method of transfer of funds, the insurance institutions of the States to which they belong should enter into agreements for this purpose

ITALY

24 It is considered that institutions should be allowed to transfer reserves in respect of rights in course of acquisition Indeed this principle has already been recognised in a number of important international treaties Nevertheless stress must be laid on the optional nature of the transfer, and the Government expresses the view that both the institutions concerned should be given a choice The institution which is to receive the transfer should be entitled to refuse it, even if a general agreement has been reached as to the methods of capitalising the rights In other words, both institutions should be allowed to use their discretion in each case as it arises

LUXEMBURG

24 The power suggested should be given

NETHERLANDS

24 The reply is in the affirmative, it being understood that the transfer of capital would be *optional* and not obligatory

POLAND

24 The Government does not consider it expedient to insert in the Convention a clause empowering an insurance institution to discharge its liability to the insured person by the payment to the

competent institution, subject to agreement between the two States, of capital representing rights in course of acquisition Such an arrangement would be contrary to that which, it is to be presumed, will be adopted generally under the Convention If the Convention were to provide merely that such an arrangement would be permitted, as is suggested in the Question, the rights of the insured person would certainly not be adequately safeguarded since no stipulation is made as to the manner in which the institution receiving the capital representing the rights in course of acquisition should give credit to the insured person for the periods spent with the institution transferring it The agreement between the two States referred to does not appear to provide an adequate safeguard in this respect

On the other hand, more detailed regulations governing such a transaction might encounter very serious difficulties Apart from the difficulties of an actuarial nature connected with the calculation of the capital representing the rights in course of acquisition, and in addition to the reservations on social grounds made above, it would not seem advisable, for legal considerations, to subordinate the right to benefits under invalidity, old-age and widows' and orphans' insurance — which are strict legal rights — to arrangements concluded between insurance institutions and having no legal value For this reason the Government cannot consider the adoption of such a provision without first taking cognisance of any arguments that may be put forward in its favour by other Governments

Nevertheless the principle upon which Question 24 is based could, in the opinion of the Government, be accepted in a bilateral agreement concluded in conformity with the proposal made by the Government in its reply to Question 50

### Spain

24 The Government replies in the affirmative, since there may be cases in which the institutions concerned discharge their liabilities by means of transfers of capital In such cases, it would be necessary for the two institutions to come to an agreement

### Sweden

24 The reply is in the affirmative

### Yugoslavia

24 It is thought that certain difficulties may arise in the case in question The new institution should in any case take account of periods spent with the previous institution The total amount of the pension may be modified owing to the fact that the transfer usually affects the benefit components which are subject to reduction under the rule laid down in Question 12 Further, the transfer may exercise an influence on the obligations of other institutions concerned as a result of the protective clause mentioned in Question 18 The provisions mentioned in Questions 10 and 17 would become inapplicable to the benefit of the insured person The Government is not opposed to the proposal embodied in the present question if it is

understood that the provisions laid down in Questions 10 and 17 will in fact not be applied, and that the total periods spent in insurance by the insured person will be taken into consideration The agreements concluded on this subject between insurance institutions should however be communicated to all States Members adopting the international scheme

**25. Do you propose to give power to Members, in agreement with one another, to depart from the rules suggested in paragraphs *(a)* and *(b)* of Question 12 for the purpose of calculating the benefits for which each institution is liable, on the basis in particular of the periods counted for the purpose of reckoning benefits under the law of each institution ?**

AUSTRIA

25 The reply is in the affirmative, provided that the application of the reciprocal agreement does not render difficult or impossible the application of the international scheme to other States adopting it

BELGIUM

25 The reply is in the affirmative

BRAZIL

25 The reply is in the affirmative

BULGARIA

25 The reply is in the affirmative.

CHILE

25 The reply is in the negative

CHINA

25 The reply is in the affirmative

FRANCE

25 The reply is in the affirmative

HUNGARY

25 Departure from the rule suggested in Question 12 should be admissible only in the case in which the insurance institutions or the States to which they belong enter into an agreement concerning the procedure to be adopted in regard to the transfer of funds mentioned in Question 24

ITALY

25 The method described in Question 12 of apportioning liability for benefit does not seem to be technically accurate While it is simple to apply, it is only approximate and empirical It has been observed that no other method of calculating liability *pro rata temporis* has yet been applied, but the fact that this has not been done in the past is no reason for arguing *a priori* that it cannot be done in the future

It is therefore undesirable that an international Convention, which is to be accepted and applied by all countries, should prescribe rigid methods, such as may become obsolete in time, and oblige Members adopting the scheme to apply these methods against their will and their interests It would be better to give Members the power contemplated in Question 25 and so leave the door open to such improvements as may become technically possible

LUXEMBURG

25 The power suggested should be given

NETHERLANDS

25 In the event of a pension being calculated according to the method indicated in Question 12 *(b)*, provision should be made to allow of the amount of the benefit being calculated on a more exact basis than that indicated in that question The reply to Question 25 is accordingly in the affirmative

POLAND

25 The Government has no objection to the proposal to give power to Members, in agreement with one another, to depart from the rules indicated in 12 *(a)* and *(b)* It does not appear necessary for these rules to be so rigid in character as to make it impossible for Members, in agreement with one another, to depart from them The composition of the benefits under the different insurance schemes may necessitate the adoption of some other method for the calculation of benefits for persons insured successively in several countries It might happen that a method agreed upon by two States, and differing from that adopted generally in conformity with the rules indicated in 12 *(a)* and *(b)*, would give rise to certain difficulties in connection with the calculation of benefits in a third State where the insured person was also subject to insurance , these difficulties could, however, be overcome, especially with the help of the special body provided for in Question 42

Special provisions authorising a departure from the rules indicated in 12 *(a)* and *(b)* would not be necessary if, in conformity with the Government's reply to Question 50, Members adhering to the international scheme were entitled by special treaties to depart from these rules

SPAIN

25 The reply is in the affirmative, since it would thus be possible to try to find a more just and equitable solution to the problem raised in Question 12

SWEDEN

25 The reply is in the affirmative.

YUGOSLAVIA

25 This power could only be given on condition that the total benefit due from the two countries is not less than the total benefit which would result from the application of the provisions mentioned in Question 12 *(a)* and *(b)* This is necessary, especially in cases where other countries are concerned, since it is clear that the obligations of the institutions in those countries which are not parties to the agreement departing from the rules, cannot be increased as a result of such agreement

## III — MAINTENANCE OF ACQUIRED RIGHTS

BENEFICIARIES

**26. Do you consider that, for the purpose of maintaining acquired rights, the international scheme should apply to persons entitled to benefits and resident outside the country in which the institution liable for benefit is established, and should so apply**

***(i)* irrespective of their place of residence ?**

**or *(ii)* only while resident in the territory of any other Member adopting the scheme ?**

AUSTRIA

26 *(i)* The reply is in the negative.

*(ii)* The reply is in the affirmative

BELGIUM

26 *(i)* The reply is in the affirmative

*(ii)* The reply is in the negative

BRAZIL

26 *(i)* The reply is in the negative

*(ii)* Yes , the maintenance of acquired rights should be restricted to beneficiaries resident in the territory of a State adopting the scheme

BULGARIA

26 The maintenance of acquired rights should apply only to beneficiaries resident in the territory of a State Member adopting the scheme

CHILE

26 The acquired rights of an insured person should be maintained irrespective of his place of residence, provided that it is in a country that has ratified the international Convention

CHINA

26 This scheme should apply to the persons concerned, irrespective of their place of residence

FRANCE

26 Same reply as to Question 3

HUNGARY

26 The maintenance of rights acquired should be recognised irrespective of the insured person's place of residence The rule suggested under *(1)* therefore seems desirable

ITALY

26 The Government considers that the international scheme for the maintenance of acquired rights should apply to persons entitled to benefits and resident outside the country in which the institution liable for benefit is established, irrespective of their place of residence The purpose of such a provision is to afford the greatest possible measure of protection of the rights of insured persons, particularly of foreigners who have acquired their right to benefit in the country where they have spent their occupational career, and intend to return to their country of origin The international scheme stipulates very properly that the legislation of Members adopting it should satisfy certain minimum requirements This means that all States will not be in a position to adopt the scheme, and, accordingly, if maintenance is limited to residence in the territory of Members who have done so, some insured persons will lose their rights Difficulties which may arise owing to the absence of supervision, particularly when, in the case of invalidity pensions, there is no institution to participate in the scheme, may be overcome by recourse, where necessary, to consular authorities

LUXEMBURG

26 The international scheme should apply only to persons entitled to benefit resident in the territory of a Member adopting the scheme, save in cases in which the claimant has been expelled from the territory or has been refused a residence permit

NETHERLANDS

26 The reply to this Question is in the affirmative on condition that the scheme applies only to nationals of a country which has adopted the scheme, whatever may be their place of residence

POLAND

26 The international scheme should apply to persons entitled to benefits irrespective of their place of residence *(i)* In this connection, it may be recalled that the Draft Convention ensuring equality of treatment for national and foreign workers as regards workmen's compensation for accidents and abolishing special restrictions imposed upon nationals of other States in the case of residence abroad, entails an obligation to pay pensions irrespective of whether the persons concerned reside in or outside the territory of a State that has ratified the Convention It would be difficult to justify the adoption of any other course for invalidity, old-age, widows' and orphans' insurance

It is important also to note that as a general rule bilateral agreements do not limit the maintenance of acquired rights to those cases only where the insured persons reside in the territory of the contracting country It follows that there is nothing in the actual circumstances which would make impossible the payment of benefits outside the countries bound by international agreements Supervision of the beneficiaries, which, in reality, is of practical importance only in the case of invalidity insurance, would undoubtedly be facilitated if it were exercised by the competent insurance institutions through the insurance institutions in the place of residence of the insured person, mutual assistance between insurance institutions in the matter of investigations can be guaranteed most effectively by means of an international agreement, but it is not impossible even without the formal obligations imposed by a Convention Moreover, the method referred to above is not the only way in which supervision could be exercised

SPAIN

26 The Government prefers the arrangement indicated in point *(ii)*, since difficulties might arise as regards mutual assistance between insurance institutions when one country is not bound by the international system for the maintenance of rights or does not possess even a rudimentary social insurance organisation.

SWEDEN

26 The reply is in the negative to *(i)* and in the affirmative to *(ii)*

YUGOSLAVIA

26 The international scheme should apply to persons entitled to benefits and resident outside the country in which the institution liable for benefit is established, and should so apply irrespective of their place of residence, subject to the possibility of supervision and provided that the country of residence does not place any obstacle in the way of the payment of the benefit due from its own institutions in the country of the institution liable for benefit

**27. Further, do you consider that the international scheme should apply:**

***(i)* to all persons, irrespective of nationality;**

**or *(ii)* only to nationals of Members adopting the scheme ?**

**In the latter case, do you propose to include also among the beneficiaries of the scheme all persons without nationality ?**

AUSTRIA

27 *(a)* The reply is in the negative

*(b)* The reply is in the affirmative Persons without nationality should not be included

BELGIUM

27 *(i)* Yes, irrespective of nationality

BRAZIL

27 *(i)* The reply is in the negative

*(ii)* Yes, maintenance should be restricted to persons who are nationals of States adopting the scheme and persons without nationality

BULGARIA

27 The Convention should be limited to nationals of Members adopting the scheme In respect of persons without nationality, the reply is in the negative

CHILE

27 Solely to nationals of countries that have ratified the Convention

CHINA

27 This scheme should apply to all persons, irrespective of nationality, and persons without nationality should also be included among the beneficiaries under the scheme

FRANCE

27 Same reply as to Question 3

HUNGARY

27 The international scheme to be established by the Draft Convention should apply to all persons, irrespective of nationality, who are insured with institutions of the States adopting the scheme The Government's view on this subject was given in its reply to Question 3

ITALY

27 The Government takes the view, for the reasons given above (see the reply to Question 26, page 87), that the international scheme should apply to all persons, irrespective of nationality *(i)*

LUXEMBURG

27 The scheme should apply only to nationals of Members adopting the scheme and to persons without nationality

NETHERLANDS

27 The reply to this Question is identical with that given to Question 3

POLAND

27 The Government is in principle in favour of the rule indicated in point *(i)* In the event of the scheme for the maintenance of rights in course of acquisition being applied to all insured persons irrespective of nationality, as is proposed by the Government in its reply to Question 3, provision should also be made for the application of the principle of the maintenance of rights in course of acquisition to all insured persons, irrespective of nationality, receiving benefits in virtue of this scheme In the event of the adoption of the rule indicated in *(ii)*, it would seem that any reasons of reciprocity which might justify this solution could not justify the exclusion of persons without nationality from the international scheme

SPAIN

27 In conformity with the opinion expressed in 1932, the Government prefers the rule indicated in point *(i)*.

SWEDEN

27 The reply is in the affirmative to *(i)* and in the negative to *(ii)*

YUGOSLAVIA

27. The international scheme should apply to all persons irrespective of nationality, provided that the country of which the person concerned is a national places no obstacle in the way of the payment of the benefits due from its own institutions in the country of the institution liable for benefit

RIGHTS TO BE COVERED BY INTERNATIONAL SCHEME

**28. Do you consider that the international scheme should provide for the maintenance :**

**(i) of the entirety of the benefits, the right to which has been acquired ?**

**or (ii) only of benefits other than subsidies, supplements or allowances which are payable wholly or mainly out of public funds ?**

**29. In case the international scheme should provide for the maintenance of subsidies, supplements or allowances payable wholly or mainly out of public funds, should this advantage apply**

**(i) to all persons, irrespective of nationality ?**

**(ii) or only to nationals of Members adopting the scheme?**

**In the latter case, should this advantage apply also to all persons without nationality ?**

AUSTRIA

28 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

29 *(i)* The reply is in the negative

*(ii)* The reply is in the affirmative The advantage should not apply to persons without nationality

BELGIUM

28 *(i)* The reply is in the negative

*(ii)* The reply is in the affirmative

29 This question falls in view of the reply to Question 28

BRAZIL

28 *(i)* The reply is in the negative

*(ii)* Yes, the international scheme should not cover benefits or fractions of benefits payable wholly or mainly out of public funds

29 No reply is called for in view of the opinion expressed above

BULGARIA

28 *(i)* The reply is in the negative.

*(ii)* The international scheme should not apply to benefits or fractions of benefits payable mainly or wholly out of public funds

29. In view of the reply to Question 28 *(ii)*, no reply is necessary

CHILE

28 Benefits payable out of public funds should not be included

29 No reply is given

CHINA

28 This scheme should provide for the maintenance of the entirety of the benefits the right to which has been acquired.

29 In such a case, the advantage should apply to all persons, irrespective of nationality, while those without nationality should likewise be covered

FRANCE

28 The international scheme should provide for the maintenance of benefits derived from workers' and employers' contributions, and not of States subsidies, except where stipulated by special agreements

29 Benefits reserved for nationals should be accorded only to those foreign nationals who, by virtue of special treaties of assimilation, enjoy the same benefits as nationals

HUNGARY

28 The international scheme should provide for the maintenance of all acquired rights, including rights to benefits payable wholly or mainly out of public funds

29 All the benefits resulting from the Convention should apply to all persons irrespective of nationality, insured with an insurance institution belonging to a country adopting the scheme

ITALY

28 In the opinion of the Government the international scheme should provide for the maintenance of all rights acquired under the law of the country which is liable for payment

29 Nevertheless it is considered that in the case of benefits payable out of public funds, whatever the method of calculation, maintenance should be limited to nationals of Members who have adopted the scheme, including persons who have no nationality but come from such States Members

This restriction is moreover to be found in a number of legislations, and, in the event of more liberal provisions, those laws would have to be amended Again, the provision made in each State for contributions from public funds in respect of nationals is based on considerations of internal public administration which do not always apply in the case of foreigners, unless nationals enjoy reciprocal treatment when they migrate to other countries

The international scheme postulates, to some extent, the fulfilment by national legislations of certain minimum requirements These may, as in the case of the international Conventions concerning invalidity, old-age and widows' and orphans' insurance, be held to include contributions from public funds Thus reciprocity exists as between persons insured in the several States, and accordingly the obligation to provide for contributions out of public funds in respect of the nationals of a Member which has adopted the scheme, should be recognised

LUXEMBURG

28 The scheme to be established should provide only for the maintenance of the right to benefits payable out of insurance funds

29 In the event of the scheme providing for the maintenance of the right to subsidies out of public funds, this advantage should be extended only to nationals of Members adopting the scheme, to the exclusion of persons without nationality

NETHERLANDS

28 The reply is in the affirmative to *(i)* If the international scheme is to be useful and advantageous to the insured persons, the right to the entire pension, including subsidies, supplements, etc , should be maintained If this were not done, the result would be unjust to those countries which do not give subsidies, supplements or allowances as additions to benefits, but include the subsidies etc payable out of public funds in the pensions granted

29 See the reply to Question 3

POLAND

28 The international scheme should apply to all benefits the right to which has been acquired, regardless of their financial origin *(i)*

The development of bilateral agreements tends undoubtedly to abolish restrictions as regards the enjoyment of benefits payable out of public funds It would seem to be undesirable, on social grounds, to deprive beneficiaries of a benefit component, sometimes amounting to a considerable fraction of the whole, merely on account of residence outside the country liable for it Benefits payable out of public funds are but a counterpart of the advantages which accrue to the community from the worker's employment The question of the distribution of the costs of insurance among the various parties concerned and the participation of the community, either directly in the form of contributions, or indirectly in the form of taxes, is of no decisive importance so far as the payment of the benefits abroad is concerned The contribution from public funds is very often made in such a way as to make it difficult or impossible to determine what part of the benefit corresponds to the share of the public authority in the total contribution

29 With regard to the persons to whom benefits payable out of public funds should be paid, the Government adopts the same attitude as it does with regard to the persons who should be included among the beneficiaries of the scheme for the maintenance of acquired rights (Question 27)

SPAIN

28 The Government prefers the arrangement indicated in point *(i)*, although it observes that consideration will have to be given to the question whether the acceptance of this arrangement should or should not apply to the Conventions of 1933, the proviso being added if necessary that it should not apply if the scheme for the maintenance of rights has been adopted.

29 The Government prefers the arrangement indicated in point *(i)*, so long as the persons concerned are resident in the territory of a State which has adopted the scheme, persons without nationality not being excluded

SWEDEN

28 The reply is in the affirmative to *(i)* and in the negative to *(ii)*

29 The reply is in the affirmative to *(i)* and in the negative to *(ii)*

YUGOSLAVIA

28 The international scheme should provide for the maintenance of the entirety of the benefits, the right to which has been acquired All the benefits form a single unit and there is no reason to exclude subsidies, supplements or allowances payable out of public funds

29 The maintenance of subsidies, supplements or allowances payable wholly or mainly out of public funds should apply to all persons irrespective of nationality, with the exception of nationals of States which refuse to pay pensions or supplements payable out of public funds to insured persons possessing the nationality of the country from which the benefit is due

**30. Do you consider that the provisions of national law relating to the commutation of a pension for a lump sum in case of residence abroad should not apply to beneficiaries under the international scheme while resident in the territory of any other Member adopting the scheme ?**

AUSTRIA

30 These provisions should not be applied

BELGIUM

30 The decision on this question should be left to the national laws of the countries concerned

BRAZIL

30 No, the Government is of opinion that the insurance institution should be at liberty completely to discharge its liability towards an insured person resident abroad by the payment of a lump sum equivalent to the pension, *whatever the amount of the pension* This observation applies especially to the new countries of immigration such as Brazil, for example, for whom it is of the utmost importance, from the point of view of their economic development and financial stability, to restrict as far as possible

periodic outflows of money in the form of interest payments, pensions, etc Their prosperity requires that they should endeavour to ensure that the nation benefits to the greatest possible extent from the advantages resulting from the expenditure of such funds within their own countries

In the countries now under consideration, the position of which must be clearly distinguished from that of colonies, the organisation and operation of social insurance are subject to difficulties, losses and hazards which are unknown in older established countries When they provide normal conditions from the point of view of civilisation, health, livelihood and security, not only is it right that, without prejudice in any way to the rights of the insured person, the methods of paying pensions should be simplified, but it is the duty of the Government to take any step which may be appropriate to induce the recipients of pensions not to go away and spend their income abroad, but unless there are strong reasons to the contrary to spend it in the country which provides them with the means of livelihood they enjoy as insured persons

The Government feels that this view is in accordance with a right understanding of economic requirements considered from the point of view of international equity

The Government is of opinion that the institution liable for benefit should be left free to discharge its liability to an insured person resident abroad either by the regular payment of the pension or by the payment of an equivalent lump sum as it may find either course possible and convenient, and whatever the amount of the pension Such cases will arise almost always in the new countries of immigration, where the financial situation is generally subject to more uncertainty and calls for more care as regards international transfers of funds

BULGARIA

30 The reply is in the affirmative

CHILE

30 The reply is in the affirmative

CHINA

30 The Government considers that these provisions of national law should not apply to beneficiaries under the international scheme

FRANCE

30 Same reply as to Question 3

HUNGARY

30. So far as possible, the commutation of acquired rights for a lump sum in the case of residence abroad should be avoided

ITALY

30 When migrants are resident in the territory of Members adopting the scheme, their rights should be fully maintained without exception The Government is therefore of opinion that provisions relating to the commutation of a pension for a lump sum should not apply to such migrants

LUXEMBURG

30 The establishment of the international scheme should entail the suspension of these provisions of the national law so long as the beneficiaries are resident in the territory of any other Member adopting the scheme

NETHERLANDS

30 The provisions relating to the commutation of a pension for a lump sum should not apply in the circumstances stated in this question, it being understood that the persons concerned must be nationals of a Member adopting the international scheme and must be resident in a country which has also adopted the scheme

POLAND

30 Provisions relating to the commutation of a pension for a lump sum should not, in the opinion of the Government, be applied to beneficiaries residing abroad even though they may reside outside the territory of States adhering to the scheme for the maintenance of rights (See the reply to Question 26 ) The application of such provisions cannot be considered compatible with the application of the scheme, inasmuch as they are, in the majority of cases, merely a form of restriction of the rights of the persons concerned imposed because of their residence abroad As a general rule, the lump sum payment does not correspond to the total value of the periodical benefits which it is intended to replace In any case, from the point of view of the interests of the persons concerned, there is no argument in favour of the payment of benefits in such a form (and not in the usual form of a pension) in the case of residence abroad In the event of the adoption (in accordance with the Government's reply to Question 26) of the principle of the payment of benefits abroad without restriction in the case of the residence of insured persons in the territory of States not adopting the scheme, there would be no occasion to provide in such cases for the commutation of the pensions by a lump sum

SPAIN

30 Commutation should be permitted, but with certain restrictions, inasmuch as it is not, generally speaking, in the interest of the insured persons

SWEDEN

30 National law should not be applied in these cases

YUGOSLAVIA

30 The provisions of national law relating to the commutation of a pension for a lump sum in case of residence abroad should not apply to beneficiaries under the international scheme while resident in the territory of any other Member adopting the scheme.

**31. *(a)* Do you consider that the international scheme should provide for the maintenance of pensions awarded under a non-contributory scheme on behalf of persons entitled to such pensions and resident outside the country which is liable for them ?**

***(b)* If so, do you propose to grant this advantage to persons entitled to non-contributory pensions :**

***(i)* irrespective of their place of residence ?**

or ***(ii)* only while resident in the territory of any other Member adopting the scheme ?**

AUSTRIA

31 *(a)* The reply is in the affirmative, provided that the right to benefit is accorded also to nationals of the other States adopting the scheme

*(b) (i)* The reply is in the negative

*(ii)* The reply is in the affirmative

BELGIUM

31 *(a)* This depends upon the conditions upon which the non-contributory pension is granted If the pension is a right — and in this case only — the reply is in the affirmative

*(b) (i)* The reply is in the affirmative

*(ii)* The reply is in the negative.

BRAZIL

31 *(a)* The reply is in the negative

BULGARIA

31 The reply is in the negative

CHILE

31. The reply is in the negative

CHINA

31 *(a)* The scheme should provide for the maintenance of such rights

*(b)* The Government proposes to grant this advantage to such persons, irrespective of their place of residence

FRANCE

31 Same reply as to Question 3

HUNGARY

31 *(a)* and *(b)* The international scheme should provide for the maintenance on behalf of persons entitled to pensions resident outside the country liable for them of benefits payable under non-contributory schemes irrespective of the place of residence of the beneficiaries but subject to the restriction that only persons insured with the institutions of the States adopting the scheme, irrespective of nationality, should benefit by this advantage

ITALY

31 In view of its replies to Questions 26 and 28, the Government is of opinion that provisions for the maintenance of acquired rights should also apply to pensions awarded under a non-contributory scheme, irrespective of the beneficiaries' place of residence *(1)*

LUXEMBURG

31 The maintenance of acquired rights should apply to persons entitled to non-contributory pensions who are nationals of a State Member adopting the scheme, subject to the condition, except in the case of expulsion from the territory or refusal of a residence permit, that they are resident in the territory of another State Member adopting the scheme

NETHERLANDS

31 It would be very desirable to include in the Convention provisions relating to the payment of pensions awarded under non-contributory schemes Consideration of this question should start from the standpoint that pensions awarded under non-contributory schemes should be payable abroad only in cases where such pensions take the place of pensions awarded under an insurance scheme and may be regarded as equivalent to such pensions Further, payment should be effected irrespective of the residence of the beneficiary, provided that he is a national of a State which has adopted the scheme

POLAND

31 *(a)* The reply is in the affirmative As the Conventions on invalidity, old-age and widows' and orphans' insurance provide that, in order to satisfy the requirements of those Conventions, a State

which has a non-contributory insurance scheme must fulfil certain conditions relative to the equivalence of its scheme to the general schemes of invalidity, old-age and widows' and orphans' insurance, it is essential that the Convention on the maintenance of rights should impose on States with non-contributory schemes similar obligations in respect of the maintenance of rights Serious difficulties might result from the regulation, in conformity with the proposals set forth in Questions 2-25, of the situation of persons who have worked successively in several countries of which one or more had a scheme of non-contributory pensions These difficulties do not arise in the case of benefits the right to which has already been acquired.

*(b)* In conformity with the reply given to Question 26, the Government prefers the rule indicated under *(a)*

SPAIN

31 In the view of the Spanish Government, social insurance schemes and non-contributory pensions schemes should not be dealt with in the same international regulations The Government therefore expresses no opinion on this Question

SWEDEN

31 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative to *(i)* and in the affirmative to *(ii)*

YUGOSLAVIA

31 The international scheme should provide for the maintenance not only of acquired rights but also of rights in course of acquisition as regards non-contributory pensions This advantage should be allowed to all persons entitled to non-contributory pensions, irrespective of their place of residence Maintenance should, however, only be compulsory subject to the possibility of supervision, and provided that the country of residence puts no obstacle in the way of the payment of the benefits due from its own institutions in the country of the institution which is liable for benefit

It would be desirable to apply to the maintenance of non-contributory pensions the same principles as are adopted in the case of subsidies, supplements or allowances payable out of public funds, even if some limitations are introduced

Special facilities should be provided in cases where the person entitled to the pension resides in his country of origin

ARRANGEMENTS FOR PAYING BENEFITS

**32. Do you consider it desirable to lay down that the institution liable for benefit under the international scheme should have power to discharge in the currency of its own country its liability to persons entitled to benefit ?**

AUSTRIA

32 The reply is in the affirmative

BELGIUM

32 The reply is in the affirmative.

BRAZIL

32 The reply is in the affirmative

BULGARIA

32 The reply is in the affirmative

CHILE

32 The institution liable for benefit should discharge its liability in the currency of its own country

CHINA

32 The reply is in the affirmative.

FRANCE

32 The reply is in the negative A debtor institution should not be given the right to pay only in the currency of its own country The conditions under which the institutions should discharge their liabilities should be fixed by special agreements to be concluded between the different countries

HUNGARY

32 It should be laid down that the institution liable for benefit may discharge its liability to persons entitled to benefit in the currency of its own country

ITALY

32 The reply as regards the right of an institution to discharge its liability in the currency of its own country is in the affirmative, subject, however, to a reservation When the insured person migrates to a country which has not adopted the international scheme, it is quite natural that the institution should discharge its liability in the currency of its own country, although this may be to the disadvantage of the insured person, who may often be ignorant of exchange rates or liable to be victimised by speculators But a different procedure might perhaps be adopted in the case of migration to the territory of a Member which has adopted the scheme and affords administrative reciprocity. If payment is effected through the institution of the country of residence under the same procedure as in other cases where liability is shared, it should be possible for the beneficiary to receive his pension in the currency of that country

The Draft Convention might perhaps draw this distinction

LUXEMBURG

32 It would be useful to make express provision on this point, as suggested

NETHERLANDS

32 As in the case of Question 22, the reply to this Question is in the affirmative

POLAND

32 The reply is in the affirmative However, such a question falls rather within the competence of national legislation and it is doubtful whether it is necessary to deal with it by means of a Draft Convention

SPAIN

32 The reply is in the affirmative, the institution liable for benefit being bound solely to pay the benefit which would be granted if the insured person were within the country

SWEDEN

32 The reply is in the affirmative

YUGOSLAVIA

32 The institution liable for benefit under the international scheme obviously has power to discharge its liability to persons entitled to benefit in the currency of its own country The proposed provision is therefore unnecessary

**33. *(a)* Do you propose to give the institution liable for benefit power to commute any pension the monthly rate of which does not reach a certain minimum for a lump sum to be calculated according to the provisions applicable to the institution ?**

***(b)* If so, how do you propose to fix this minimum ?**

***(c)* Further, do you propose to lay down a special minimum for the case where partial pensions are due from the institutions of two or more Members participating in the international scheme ?**

***(d)* If so, how do you propose to fix this special minimum ?**

AUSTRIA

33. *(a)* The reply is in the negative

With a view to meeting the difficulty connected with the paying of small pensions, it would be preferable to include in the Convention a provision authorising insurance institutions to pay small pensions at intervals of longer than a month

BELGIUM

33 *(a)* The reply is in the affirmative

*(b)* It should be left to the Governments and to the insurance institutions concerned to fix this minimum

*(c)* The reply is in the negative

BRAZIL

33 *(a)* See the reply to Question 30

BULGARIA

33 *(a)* The reply is in the affirmative.

*(b)*, *(c)* and *(d)* Each country should regulate this question for itself for it would be very difficult to fix a minimum which would be acceptable internationally

CHILE

33 *(a)* The reply is in the affirmative

*(b)* The minimum should be fixed in relation to wages

CHINA

33 *(a)* The Government proposes to give such power to the institutions liable for benefit

*(b)* The Government considers that the scheme should not provide for a special minimum, and each institution liable for benefit should determine for itself whether the pension is small enough for commutation according to the provisions of its own law

*(c)* The reply is in the negative

FRANCE

33 Each country should have the right to commute the portion of pension due for a lump sum, calculated in conformity with its own legislation

HUNGARY

33 As a rule it does not seem desirable to pay to claimants a lump sum instead of a pension It would, however, be admissible for certain insurance institutions liable for benefit to be allowed to commute the share of benefit which they are liable under the Convention to pay to claimants who have acquired rights in several States, irrespective of the amount of the contributions, by transferring to one of the insurance institutions liable for benefit the capital sum equivalent to the share of benefit for which they are responsible Commutation should be effected on the basis of a table annexed to the Convention indicating the capital equivalent at any time to a given benefit liability, regard being had to the former occupation, age, etc , of the recipient of the pension If this method were adopted, there would be no need to fix a minimum,

since, in accordance with the agreement between the institutions concerned, the commutation of pensions could be effected in respect of any partial benefit, no matter of what amount

ITALY

33 The purpose of commuting small pensions is to avoid the administrative expense connected with the periodical payment of insignificant amounts Bearing this is mind, the Government is in favour of the proposal, although it wishes to draw a distinction in the case of residence in a country which has adopted the scheme, and again as between payments payable by a single institution and those for which several institutions are jointly liable

When the beneficiary is resident in a country which has adopted the scheme and the institution of that country has regular dealings, in respect of other cases of maintenance of rights, with the institution which is liable, the administrative difficulty raised by the payment is considerably reduced Hence the maximum fixed for pensions which may be commuted must differ according to whether there is reciprocity or not

When a single institution is liable for benefit, the maximum amount should be the same as that stipulated in the law of the institution for all insured persons whether in compulsory or in voluntary insurance Where no such legislative provision exists, it would be necessary to prescribe, not a fixed monthly rate of pension which would be the same for all States Members, since this would make for inequality owing to differences in the value of money and in the cost of living, but a limit which would be in proportion to this cost, and which might be expressed as monthly pension not exceeding the average daily wage of persons insured with the institution of the country of residence

The special body contemplated in Question 42 might well propose a maximum limit on these lines for commutation

If several institutions are jointly liable for benefit, there is, in virtue of the protective clause, no likelihood of their all having to effect small payments which would be subject to commutation In such cases the maximum amount of the payment which could be commuted should be fixed in proportion to the total benefit, as suggested in the reply to Question 17 In this particular respect the two replies agree

The remarks made above are based on the idea that the commutation even of very small pensions is rather to the disadvantage than to the advantage of insured persons and that its application should therefore be limited In any case, when several institutions are jointly liable, the capital amount should not be paid to the beneficiary, but to the institution of the place of residence or to the last institution participating in the payment of the pension The institution concerned could convert the capital into pension at its own rate and add the result to the amount for which it was itself liable

LUXEMBURG

33 Each institution liable for benefit should be given the right to commute pensions or fractions of pensions due by it which do not exceed the minimum pension provided for by its national legislation

NETHERLANDS

33 The power to commute small pensions should be given There is, however, a certain risk in commutation , in the case of an insured person entitled to receive several small pensions from different institutions, he might, if commutation is authorised, receive only lump sums which would also be small, and would draw no pension at all In cases of this kind it would be preferable to pay the pensions every three or six months

In any event, the minimum should be left to be fixed by national legislation

POLAND

33 *(a)* The Government does not oppose the adoption of such a provision in the Convention, although it considers it unnecessary to authorise in a Convention the commutation of small pensions for a lump sum in cases where the insured persons reside abroad. In so far as national law makes general provision for the commutation of small pensions for a lump sum, the Convention would not restrict the application of such provision to insured persons resident abroad

*(b)* 5 Swiss gold francs for invalidity and old-age pensions, 3 Swiss gold francs for widows' and orphans' pensions

*(c)* The reply is in the affirmative The Government considers that, in order to simplify and unify the procedure relating to the transfer of benefits, it might be provided that in cases where the insured persons receive, in virtue of the scheme for the maintenance of rights in course of acquisition, partial benefits from the institutions of two or more States participating in the scheme, and when a particular pension does not exceed a fixed amount, the institution liable for the payment of these pensions could entrust the payment to another institution which would assume the responsibility for payment, the amount and other conditions of the pension being in conformity with the rules in force for the institution liable for the pension The institution liable for payment would transfer to the institution undertaking the liability the value in capital, the amount of which would be determined by an agreement between the two institutions

*(d)* 5 Swiss gold francs for invalidity and old-age pensions and 3 Swiss gold francs for widows' and orphans' insurance

SPAIN

33. *(a)* The reply is in the affirmative

*(b)* The fixing of the minimum should be left to be settled by special agreements between States

*(c)* The reply is in the affirmative

*(d)* The matter should be dealt with in the same way as is indicated in the reply to clause *(b)*

SWEDEN

33 *(a)* the reply is in the affirmative

*(b)* (No reply is given )

*(c)* and *(d)* No , it would seem that the minimum for the total of the partial pensions should be the same as that fixed under *(a)*

YUGOSLAVIA

33 The institution liable for benefit should have power to commute any pension, the monthly rate of which is not as much as three or five Swiss francs, provided that the pension is payable in a foreign country and that the person entitled to it is not entitled to a partial pension from some other institution which, when added to the first pension, would amount to three or five Swiss francs per month In the case of partial pensions it is not proposed to lay down any minimum All partial pensions should be paid by the same institution, and this should as a general rule be the institution of the country of residence The calculation of small pensions does not give rise to any difficulty, and the institution liable for them could transfer the capital necessary to cover them to the institution which is to undertake the payment of the total pension

The institution liable for benefit should also be empowered to pay certain pensions, e g those which do not exceed ten Swiss francs per month, at longer intervals

**34. Do you consider that the provisions of the national law of a Member for the reduction or suspension of benefit in case of concurrent rights to other social insurance benefits, or in case of exercise of an employment involving liability to insurance, should apply to persons entitled to benefits under the international scheme, even in respect of benefit payable by an insurance institution established in the territory of any other Member participating in the scheme and in respect of the exercise of an employment in such territory ?**

AUSTRIA

34 The reply is in the affirmative

BELGIUM

34 The reply is in the affirmative

BRAZIL

34 The reply is in the affirmative

BULGARIA

34 The reply is in the affirmative

CHILE

34 The reply is in the affirmative

### China

34 The reply is in the affirmative, provided there is no discrimination whatever in the treatment of foreign and national workers

### France

34 Same reply as to Question 3

### Hungary

34 The insurance institution of each State which is liable to pay partial benefit under the Convention should be authorised to apply to persons entitled to benefit the provisions relating to reduction which it has the right to apply under its own law to its nationals, without having to take into account any question as to in which territory of a contracting State the conditions for the reduction or suspension of benefit arose Such restrictions could not, however, be applied to cases in which the Draft Convention makes other provisions (for example, cessation of payment of benefit in case of residence abroad, etc )

### Italy

34 The reply is in the affirmative National legislative provisions for the reduction or suspension of benefit in the case of concurrent rights to other social insurance benefits, or in that of exercise of an employment involving liability to insurance, should apply to persons entitled to benefits under the international scheme

### Luxemburg

34 These provisions should be applied even in respect of benefit payable by an insurance institution established in the territory of another State or in respect of the exercise of an employment in another State

### Netherlands

34 The Netherlands legislation does not, generally speaking, impose any limitation in regard to concurrent pensions It would, however, be necessary to provide that provisions relating to concurrent pensions in the legislation of any country might be applied to persons in receipt of a pension awarded by an institution in another country whether that country had or had not adopted the international scheme An exception ought, however, to be made in regard to pensions awarded by the insurance institution of another country under an invalidity, old-age and widows' and orphans' insurance scheme in conformity with the international regulations

### Poland

34 The reply is in the affirmative

SPAIN

34 The reply is in the affirmative, since the social insurance system ought not to grant benefits which, in the aggregate, exceed the loss suffered by the insured person

SWEDEN

34 The reply is in the affirmative

YUGOSLAVIA

34 The Government replies to Question 34 in the affirmative subject to the intervention of the body referred to in Question 42 In addition it proposes that the rule should be extended to benefits and employment in countries which have not adopted the international scheme but which are bound by other international treaties, and perhaps even to countries which are not bound by any international treaty, provided that it is possible in those countries to ascertain with certainty the existence of such benefits or employment

## IV — MUTUAL ASSISTANCE IN ADMINISTRATION

**35. Do you consider it desirable to lay down the principle that the authorities and the social insurance institutions of Members adopting the international scheme should afford one another assistance to the same extent as they do in applying their own social insurance legislation ?**

AUSTRIA

35 The reply is in the affirmative

BELGIUM

35 The reply is in the affirmative

BRAZIL

35 The reply is in the affirmative

BULGARIA

35 The reply is in the affirmative

CHILE

35 The reply is in the affirmative

CHINA

35 It would be useful to lay down such a principle

FRANCE

35 The reply is in the affirmative

HUNGARY

35 It is desirable to lay down the principle indicated

ITALY

35 The Government considers it desirable to lay down the principle that the authorities and institutions of Members adopting the scheme should afford one another administrative assistance

LUXEMBURG

35 A stipulation for mutual assistance between institutions coming under the international scheme is indispensable

NETHERLANDS

35 The reply is in the affirmative

POLAND

35 The reply is in the affirmative

SPAIN

35 The reply is in the affirmative, in conformity with the established practice in existing international treaties, and with the results of experience

SWEDEN

35 The reply is in the affirmative

YUGOSLAVIA

35 It is desirable and indeed necessary to lay down a provison of this kind

**36. If you agree with the principle of mutual assistance, do you consider that such assistance should include the necessary investigations and medical examinations requested by the insurance institution of any other Member participating in the international scheme for the purpose of determining whether the persons in receipt of benefits for which this institution is liable satisfy the qualifying conditions ?**

AUSTRIA

36 The reply is in the affirmative

BELGIUM

36. The reply is in the affirmative

BRAZIL

36 The reply is in the affirmative

BULGARIA

36 The reply is in the affirmative

CHILE

36. The reply is in the affirmative

CHINA

36. Such assistance should include the necessary investigations and medical examinations requested by the said insurance institution

FRANCE

36 The reply is in the affirmative

HUNGARY

36 It seems desirable that mutual assistance should include the investigations and examinations indicated in this question.

ITALY

36. Having agreed to the principle, the Government considers that such mutual assistance should include the investigations necessary for the purpose of settling claims and supervising the payment of benefits and for any other object proposed by any of the institutions concerned in the States Members adopting the scheme

LUXEMBURG

36 Mutual assistance should include all checks, investigations and medical examinations necessary for the purpose of determining the right to benefit

NETHERLANDS

36. The reply is in the affirmative, on condition that each insurance institution examines and decides for itself the question whether the applicant fulfils the conditions required to obtain the right to a pension and is at liberty to conduct an enquiry on the spot

POLAND

36 The reply is in the affirmative

SPAIN

36 The reply is in the affirmative

SWEDEN

36 The reply is in the affirmative

YUGOSLAVIA

36 The reply is in the affirmative

**37. *(a)* Do you consider that it would be desirable to lay down rules for the repayment of the expenses of mutual assistance ?**

***(b)* If so, do you propose that the sum to be repaid should be determined according to the scale of the authority or insurance institution which affords assistance, and that, in the absence of a scale, the actual expenditure incurred should be repaid ?**

***(c)* Further, do you propose to fix the date at which repayment is to be effected, and, if so, how ?**

AUSTRIA

37 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative The repayment of the expenses should be regarded as being due on the date on which the official transaction giving rise to repayment is completed The claims should be settled in the currency in which the expenditure was incurred within a month after the notification In the case of delay in payment, interest on the amount due should be charged from the date on which it is due at the rate prevailing in the country of the institution that gave assistance

BELGIUM

37 *(a)* The reply is in the negative It is preferable to leave the institutions concerned free to decide this matter

BRAZIL

37 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the negative

BULGARIA

37 *(a)* and *(b)* The reply is in the affirmative

*(c)* The reply is in the negative

### Chile

37 As the expenses will be compensated by the mutual assistance given, there is no necessity for repayment

### China

37 *(a)* It would be desirable to lay down rules for this purpose

*(b)* The reply is in the affirmative

*(c)* The Government considers that the last day of each month should be fixed for this purpose

### France

37 The rules relating to the repayment of the expenses of mutual assistance should be settled by special agreements

### Hungary

37 *(a)*, *(b)* and *(c)* In order to avoid disputes over the settlement of accounts, it is desirable to lay down the principle that no repayment should be due in respect of mutual assistance given to one another by insurance authorities or institutions The only exception to this rule should be in the case of expert medical advice, and then only if, for the purpose of the expert medical examination, the insured person has to be sent to hospital or other expensive methods of examination are necessary The amount to be recovered should be fixed in each case on the basis of the expenditure actually incurred The insurance institutions concerned should settle their accounts in respect of expenditure incurred during the preceding year by 31 March of the following year

### Italy

37 The Government is of opinion that rules should be laid down for apportioning the expenses of mutual assistance and for their repayment

As regards the calculation of such expenses, the institution which renders the assistance, and which will presumably be that of the country of residence, should be allowed to apply its own cost schedules, or in the absence of any such schedules, to indicate the amount of the actual expense incurred As the institution in question will very likely have any medical or administrative investigations carried out by its own officials, its right to reimbursement at the usual cost rates for such services in its own locality or country should be recognised

As regards the allocation of the expense when several institutions are concerned, this should be done in proportion to the share of benefit borne by each institution, as suggested in the reply to Question 20 concerning medical treatment If however, one institution alone has, owing to some peculiarity of its own law, asked for a special investigation or enquiry which is of no interest to the others, that institution should bear the whole expense

The repayment of such expenses or parts thereof should be effected according to the same rules as, and in conjunction with, the repayment of the share of the total benefit, which, according to Question 39, is to be paid out by the institution of the place of residence Whenever expenses are incurred, the institution which is to recover the amount will debit the current account of the institution which is liable for payment and advise the latter of the entry Current accounts might, for instance, be settled quarterly

LUXEMBURG

37 Each institution should as a matter of reciprocity bear the cost of any assistance which it is called upon to give It may be presumed that normally the reciprocal costs will cancel one another

NETHERLANDS

37. The international scheme should not contain any rules dealing with this Question The matter should be left to be settled by the institutions and States among themselves The institutions or the States can come to some arrangement as cases arise

POLAND

37 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative Three months from the date of the conclusion of the official transaction giving rise to the repayment

SPAIN

37 *(a)* The Government replies in the affirmative, with a view to avoiding discussion and ensuring uniformity of conditions.

*(b)* The reply is in the affirmative

*(c)* The reply is in the affirmative The Government proposes that repayment should be effected quarterly

SWEDEN

37 *(a)* The reply is in the negative.

YUGOSLAVIA

37 It is necessary to lay down rules for the repayment of the expenses of mutual assistance The sum to be repaid might be determined according to the scale of the authority or insurance institution which affords assistance, but that scale should not be sensibly higher than the actual expenditure If the institution which has to repay the expenditure considers that the amounts laid down in the scale are very much higher than the actual expenditure, it should be able to claim the right to repay the actual expenditure only The countries or institutions concerned should have power to conclude special agreements on this subject

The date of repayment should be determined in accordance with the time at which the assistance was actually given and when the procedure concerning such assistance is completed The repayment of the expenses of mutual assistance should be effected within a specified time limit, e g one month or three months from the date mentioned above, and should be effected in the currency of the country which afforded assistance If there is a delay in the repayment of the expenses one per cent interest per month should be charged

**38. Are you in favour of providing that the privilege of exemption from taxation accorded for documents submitted to the authorities or insurance institutions of one Member should be extended to the corresponding documents submitted, in connection with the administration of the international scheme, to the authorities and institutions of any other Member participating in the scheme ?**

AUSTRIA

38 The reply is in the affirmative

BELGIUM

38 The reply is in the affirmative

BRAZIL

38 The reply is in the affirmative

BULGARIA

38 The reply is in the negative

CHILE

38 The reply is in the affirmative

CHINA

38 The Government is in favour of providing that the privilege of exemption from taxation should be extended to such cases

FRANCE

38 It is desirable that the documents to be submitted should be exempt from taxation The extent of such exemption and the conditions attached to it should be settled by special agreements

HUNGARY

38 It is desirable to provide for the exemption from taxation mentioned in this question

ITALY

38 The Government is in favour of exempting the necessary documents from taxation Provision is made for such exemption in the treaties concluded between Italy and other countries

LUXEMBURG

38 Exemption from taxation of all documents should, as a general rule, be required

NETHERLANDS

38 No compulsory provisions on this point should be included in the international scheme
Under the Netherlands legislation documents issued for the purposes of the social insurance legislation are exempt from stamp duty

POLAND

38 The reply is in the affirmative

SPAIN

38 The reply is in the affirmative The principle adopted in national legislation will thus be applied internationally

SWEDEN

38 The reply is in the affirmative

YUGOSLAVIA

38 The reply is in the affirmative

**39. Do you consider that the institution liable for benefit should be empowered, where the beneficiary resides in the territory of another Member participating in the international scheme, to agree with the institution competent for the place of residence of the beneficiary that the latter institution should undertake the payment of the benefit, subject to repayment by the former ?**

AUSTRIA

39 The reply is in the affirmative

BELGIUM

39 The reply is in the affirmative

BRAZIL

39 The reply is in the affirmative

BULGARIA

39 Yes, in national currency

CHILE

39 Yes, after agreement

CHINA

39 The reply is in the affirmative

FRANCE

39 The reply is in the affirmative

HUNGARY

39 The payment of benefit would be effected in the simplest manner and the one best suited to the needs of the beneficiary if the insurance institution of the State in whose territory the beneficiary resides undertakes the payment in one sum of the fractions of benefits due to be paid by several insurance institutions When the beneficiary is resident in the territory of a State which has not adopted the scheme, the insurance institution of the last State adopting the scheme with which the beneficiary was insured should be required to pay the benefit Inasmuch, however, as the application of this method, though desirable, might encounter difficulties due to differences and fluctuations in rates of exchange, objection should not be taken to the payment to the claimant by each institution separately of the share of benefit for which it is liable

ITALY

39 In the opinion of the Government, it should be a general rule, rather than a facility granted to the debtor institution, that payment be made to the institution of the country of residence, in so far as this country has adopted the scheme This procedure is appropriate, when more than one institution is liable for benefit, whether they include the institution of the country of residence or not, for if the latter serves as an intermediary, a single periodical payment can be made to the beneficiary, and supervision is easier The same rule should however be applied when a single institution is liable for benefit On the principle of administrative reciprocity, this institution should always make use of the institution in the country of residence

The Government, however, considers that an international Draft Convention should include, besides the general rule that the payment of benefits shall be entrusted to the institution of the country of residence, other rules as to the way in which this shall be effected, for instance as to the currency in which payments shall be effected and the dates of repayment

As regards the currency, the Government is of opinion that each institution should calculate its share in its own currency Payment by the institution of the country of residence can only be

effected in the currency of that country, particularly when several institutions are concerned, and the value of the different currencies may vary. The variations may even be considerable when currencies are not based on gold Accordingly, some general rule should be adopted with a view to avoiding repeated fluctuations in the value of *pro rata* payments received and to stabilising, for a given length of time, the amount of benefit paid in the currency of the country of residence The institution in this country might, for instance, calculate at the beginning of each half-yearly period the amounts of benefits or shares of benefit and these amounts would remain constant for six months The institution liable for benefit would then convert into its own currency, at the date of reimbursement, the value of the payments effected

The Government is of opinion that the institutions which are liable should refund their share of benefit at intervals of not less than three months When the amount of its disbursements on behalf of one or more other institutions is such as to exceed the limits of its normal resources, the institution of the place of residence might be allowed to ask for a payment on account

LUXEMBURG

39 The principle suggested should constitute the general rule.

NETHERLANDS

39 The international scheme should not lay down any obligatory rules on this point The institutions concerned should be free to come to some arrangement between themselves if the need arises, it being understood that the matter is optional for the two institutions

POLAND

39 The reply is in the affirmative

SPAIN

39 The reply is in the affirmative The existing treaties already provide for mutual administrative assistance of this kind.

SWEDEN

39 The reply is in the affirmative

YUGOSLAVIA

39 The institution liable for benefit should be empowered, where the beneficiary resides in the territory of another Member participating in the international scheme, to agree with the institution competent for the place of residence of the beneficiary that the latter institution should undertake the payment of the benefit subject to repayment by the former When partial benefits are due to the same beneficiary from the institutions of more than one State participating in the international scheme, those institutions should be obliged to

entrust the payment of benefit to the institution of the place of residence In the latter case the exchange rate for the purpose of conversion should be determined in accordance with the provisions mentioned under 22, and the expenses of mutual assistance should be paid not later than the end of each quarter Any delay in payment should give rise to the payment of the interest mentioned under 37 A persistent delay on the part of the institution liable for benefit should result in the cessation of the payment of the benefit

**40. Do you consider that an insured person who enters the insurance of a Member adopting the international scheme should be required to declare, within a certain time-limit reckoned from the date of such entry, the periods spent by him in the insurance of any other Member adopting the scheme ?**

AUSTRIA

40 The reply is in the affirmative

BELGIUM

40 The reply is in the affirmative

BRAZIL

40 The reply is in the affirmative

BULGARIA

40 The reply is in the affirmative

CHILE

40 The reply is in the affirmative

CHINA

40 The reply is in the affirmative

FRANCE

40 Same reply as to Question 3

HUNGARY

40 It is desirable to prescribe the obligation to be imposed on insured persons in this matter

ITALY

40 If insured persons are to declare, within a certain time limit reckoned from the date of entry, the periods spent by them in the insurance of other countries, provision should be made for some sanction in the event of failure to make the declaration, and

the sanction would consist in refusal to recognise the periods in question In the absence of any sanction, the insertion in an international Convention of the clause contemplated would be quite ineffectual and therefore superfluous But is it possible to treat the omission as an offence ? Clearly not, for in many cases, if not in the majority, this would unduly penalise insured persons Owing to ignorance of the law and of the provisions of international treaties, such persons would very often fail to make their declaration within the prescribed time-limit The last insurance institution might also be penalised, for if the period of insurance were sufficient, the benefit it would have to pay would certainly be more than its share of joint liability with the other institutions, particularly if the benefit were fixed independently of time

The fact that the insured person is obliged to present, through the intermediary of the last institution, his claim even in respect of all the periods spent with other institutions disposes of the technical difficulties, since these only arise when the right to pension is claimed Nor can statistical significance be attached to incomplete declarations, which presumably will not be presented by the majority of the persons concerned Reliable statistics cannot be compiled until the settlement of claims makes it really possible to ascertain the number of periods spent in the different countries

It should be added that the declaration ought to be presented to the institution of the country to which the insured person has migrated The previous institutions will have no knowledge of further periods and accordingly the declaration would be of no interest to them, but only to the last institution, unless this last institution were obliged to inform the previous institutions of subsequent periods Such a procedure would not, however, be attended by any practical advantage and would give rise to considerable administrative difficulties

For the reasons given above, the Government is not in favour of making declarations by insured persons compulsory in an international scheme

If, on the other hand, individual institutions find it necessary to have knowledge of previous insurance periods, they can always obtain these for their own purposes, by means of appropriate propaganda among employers and insured persons Indeed the latter in some cases, spontaneously declare periods

LUXEMBURG

40 Insured persons should be required to make the declaration in question Failure to make the declaration should not, however, entail more than a nominal penalty

NETHERLANDS

40 Complete liberty should be left to the various national legislations on this point If a Member desires to include in its legislation a provision imposing on insured persons the obligation here dealt with, it should be free to do so There is no reason for laying down a compulsory international rule Moreover, the degree of accuracy of the information furnished by insured persons should not be overestimated, and in the great majority of cases it may be expected that the declarations would not be forthcoming

POLAND

40 The reply is in the affirmative The introduction of an obligation to declare within a certain time-limit to be fixed by national legislation the periods spent in the insurance of any other Member adopting the scheme would be very useful It would guarantee a more efficacious control of the rights of insured persons, which is very desirable for insurance institutions

If any previous affiliation were not to be declared until the occurrence of the event insured against, insured persons might attempt to obtain, — without regard to the application of the international scheme, — the total amount of the benefits to which they might be entitled in different countries and, with this object in view, they might conceal from the institution of one of the Members the insurance periods spent previously in the insurance of a second Member The danger of such abuses would be considerably diminished if the insured persons were obliged to declare these periods when they entered insurance

SPAIN

40 The Government is of opinion that such a declaration is necessary, both for insurance institutions and for the migrant worker

SWEDEN

40 The reply is in the negative

YUGOSLAVIA

40 It is desirable that the insured person should be required to declare the periods spent by him in the insurance of any other Member adopting the international scheme It is, however, difficult to lay down any penalty for failure to fulfil that obligation

## V — OPERATION OF INTERNATIONAL SCHEME

**41. Do you consider that the coming into force of the international scheme to be established by the Draft Convention should be determined according to the following rules ?**

***(a)* Initial coming into force :**

**Twelve months after registration of the ratification of the Draft Convention by two Members, so far as they are concerned ;**

***(b)* Coming into force for other Members :**

**Twelve months after registration of their ratifications.**

AUSTRIA

41 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

The Government proposes, however, that, if technically possible, an endeavour should be made to reduce the period suggested to six months

BELGIUM

41 *(a)* and *(b)* The replies are in the affirmative

BRAZIL

41 *(a)* and *(b)* The replies are in the affirmative

BULGARIA

41 *(a)* and *(b)* The replies are in the affirmative

CHILE

41 The reply is in the affirmative

CHINA

41 It should be determined according to the rules proposed

FRANCE

41 *(a)* and *(b)* The replies are in the affirmative

HUNGARY

41 The period of twelve months after registration of the ratification fixed for the coming into force of the Convention might be reduced to six months

ITALY

41 The Government considers that the international scheme should come into force twelve months after ratification by the first two Members, so far as they are concerned, and for other Members twelve months after registration of these Members' ratifications

LUXEMBURG

41 The coming into force of the international scheme might be determined according to the rules indicated in *(a)* and *(b)*

NETHERLANDS

41 There is no reason why the ordinary rules concerning the coming into force of Draft Conventions should not apply here, the reply is therefore in the affirmative

POLAND

41 The Government approves the rules indicated in *(a)* and *(b)* for the coming into force of the international scheme

SPAIN

41 *(a)* and *(b)* The replies are in the affirmative

SWEDEN

41 *(a)* and *(b)* The replies are in the affirmative

YUGOSLAVIA

41 The Government is in agreement with all the proposals made on this point

**42. *(a)* Do you consider that it would be useful to establish a special body for the purpose of assisting Members adopting the international scheme in the application thereof ?**

***(b)* If so, how do you propose to regulate the composition of this body ?**

AUSTRIA

42 *(a)* and *(b)* In principle, the International Labour Office is the body qualified to give assistance in the application of the Convention A small committee of experts from the States Members adopting the Convention might be formed to act as an advisory organ to the International Labour Office

BELGIUM

42 *(a)* The reply is in the affirmative

*(b)* It should be composed of officials of the International Labour Office assisted, if necessary, by one or more delegates of the States concerned

BRAZIL

42 *(a)* The reply is in the affirmative

*(b)* The body should be composed of representatives of all the Governments that have ratified the Convention, each State having one member

BULGARIA

42 *(a)* The reply is in the affirmative

*(b)* One member for each State which shall have ratified the Convention, appointed by the Government of that State.

CHILE

42 Yes, the body should include a representative of each of the States that has ratified the Convention

CHINA

42 *(a)* It would be useful to establish a special body for this purpose.

*(b)* The Government proposes that at the International Labour Office an additional section or division should be established for this purpose The nominees for this section or division should be nationals of States Members adopting the scheme and adequately represent all the continents.

FRANCE

42 If it is to be an independent body, its creation can not be contemplated until some arrangement has been made as to ways and means If it is to be a body attached to the International Labour Office, the latter should take the necessary steps in this respect

HUNGARY

42 *(a)* The creation of the special international body proposed in this question is necessary

*(b)* Such a body should be established within the International Labour Office It should be called upon to apply the scheme and to give advice in the event of any dispute arising

ITALY

42 The application of the international scheme may raise many questions of a particularly technical kind, and it might be useful to set up a special committee in the International Labour Organisation, for the purpose of assisting Members adopting the scheme to settle such questions

LUXEMBURG

42 The establishment of a permanent committee attached to the International Labour Office appears to be desirable

This committee, which might, if necessary, include several sections, should include legal, medical and actuarial experts in sufficient numbers The addition of employers' and workers' delegates is unnecessary

NETHERLANDS

42 *(a)* The purport of this Question does not seem very clear Each country applies the international regulations for itself and has at its disposal its own organisations for the purposes of applying them

The Permanent Court of International Justice is the body competent in any question of interpretation, while the "Committee on Article 408" examines questions of application There is no reason for establishing a new body The Netherlands Government therefore replies in the negative to this question If any practical difficulties should arise, the International Labour Office is the body qualified to give advice

POLAND

42 *(a)* It is very desirable that a special body be set up to assist Members in the application of the international scheme It is to be feared that, in the absence of such a body, the application of the Convention might give rise to serious difficulties, particularly in view of its somewhat concise wording and of the rapid changes in insurance legislation

*(b)* The Government proposes that this body be called "Advisory Committee on Questions concerning the Maintenance of Rights under Invalidity, Old-Age and Widow's and Orphans' Insurance", and be composed of a chairman and two vice-chairmen, to be appointed by the Governing Body of the International Labour Office, and one member and one substitute member for each State adopting the scheme, these members to be selected from among experts on insurance questions and jurists

This body would be purely advisory It would in no way encroach upon the functions assigned to the Permanent Court of International Justice by Article 423 of the Treaty of Versailles with respect to the interpretation of the Conventions of the International Labour Organisation

The Committee would be entrusted (1) with the preparation of general recommendations concerning the technique of the application of the Conventions and (2) with making proposals to the Governments concerned for the settlement of difficulties which might arise between States Members in connection with the application of the international scheme

The functions referred to under (1) would be exercised by the Committee by means of resolutions adopted at its plenary sessions and those referred to under (2) at sittings of special sub-committees

The sub-committees would be composed of the chairman or a vice-chairman of the Advisory Committee and of members of the Committee, each of whom would be appointed by the Government of a State directly interested The expenses of the sub-committees would be shared on a proportional basis by the States directly interested in the matter dealt with by the sub-committees

The sub-committees would be set up at the request of the Governments interested, and even at the request of one Government only

The recommendations drawn up by the special sub-committees concerning the settlement of disputes would not be binding upon the parties concerned and would not prevent the submission of the disputes in question to the Permanent Court of International Justice which would give a final decision in so far as the interpretation of the Convention was concerned The powers of the sub-committees would, therefore, be purely conciliatory and not arbitral

The secretarial work of the Advisory Committee would be entrusted to the International Labour Office

The rules of the Advisory Comittee would be drawn up by the Governing Body of the International Labour Office

SPAIN

42 *(a)* Experience shows the necessity for such a body, which is provided for in the Franco-Spanish Agreement

*(b)* The body should not have any legal jurisdiction but should be composed of specialists in insurance, and any reference to the body, which might include representatives of employers and workers who have specialised in social insurance questions, should be accompanied by a report and draft resolution prepared by the appropriate section of the International Labour Office

SWEDEN

42 *(a)* It would seem to be difficult to form a definite opinion on this question until the terms of the proposed Draft Convention are known In any case, however, ratification of the Convention would be an important factor to be taken into consideration in this connection

*(b)* (No reply is given )

YUGOSLAVIA

42 The creation of such a body would be extremely useful, especially during the early years of application of the Convention, having regard to the numerous possibilities of dispute which may arise The interpretation of the Convention, the settlement of disputes and the supervision of the application of the Convention would remain in the hands of the bodies which already exist to fulfil those functions The body mentioned under Question 42 could give useful instructions in all disputed cases and should intervene at the request of either party before recourse was had to the ordinary procedure It might also serve as an advisory body in the course of that procedure The proposed body should consist solely of experts, as its duty would be to apply the provisions of the Convention exactly, to remedy any omissions, and to adapt its provisions to concrete cases

**43. Do you consider that pensions in respect of which no award has been made or which have been suspended, before the coming into force of the international scheme, because the persons concerned reside abroad, should be awarded or resumed as from the coming into force of the scheme ?**

AUSTRIA

43 The reply is in the affirmative

BELGIUM

43 The payment of pensions should be resumed as from the coming into force of the scheme

BRAZIL

43 The reply is in the negative

BULGARIA

43 The reply is in the negative

CHILE

43 The reply is in the affirmative

CHINA

43 The Government agrees that such pensions should be awarded or resumed as from the coming into force of the international scheme

FRANCE

43 Same reply as to Question 3.

HUNGARY

43 The award of pensions or resumption of payment of pensions as from the date on which the scheme comes into force is desirable

ITALY

43 Pensions in respect of which no award has been made or which have been suspended because the persons reside abroad, should be awarded or resumed as from the coming into force of the scheme

LUXEMBURG

43 The measure proposed is equitable.

NETHERLANDS

43 The reply to this Question is in the affirmative An international scheme would give little satisfaction if the pensions to which this question relates were not to be paid after the adoption of the scheme Payment of such pensions should, however, take place only in the case of nationals of a country which has also adopted the scheme In order to avoid any possible doubt, it is emphasised that there should be no payment of arrears of a pension in respect of periods prior to the coming into force of the scheme

POLAND

43 The reply is in the affirmative It would not be just to discriminate between future rights to benefit and those acquired prior to the coming into force of the international scheme in such a way as to exclude the latter from the scheme and to continue to apply in the future all the restrictions on the maintenance of rights Bilateral agreements apply also to benefits awarded prior to the coming into force of the agreements

SPAIN

43 The Government replies in the affirmative, adding that it would be preferable to leave the States adopting the scheme free either to commute the pensions in question or to resume payment of them

SWEDEN

43 The reply is in the negative

YUGOSLAVIA

43 The Government replies to Question 43 in the affirmative Pensions in respect of which no award has been made or which have been suspended, e g three years before the coming into force of the Convention, should be awarded or resumed automatically Pensions in respect of which no award has been made or which have been suspended, e g ten years before the coming into force of the Convention, should be awarded or resumed provided that the beneficiary makes a claim within a specified time limit, e g two years after the coming into force of the Convention, either in his country of residence or in the country of the institution liable for benefit

**44. Do you consider that, for the purpose of maintaining rights in course of acquisition under the international scheme, account should be taken of rights in respect of periods antecedent to the coming into force of the scheme ?**

AUSTRIA

44 The reply is in the affirmative

BELGIUM

44 The reply is in the affirmative

BRAZIL

44 The reply is in the affirmative

BULGARIA

44 The reply is in the negative

CHILE

44 The reply is in the affirmative

CHINA

44 The Government agrees that, for the purpose in question, account should be taken of rights in respect of periods antecedent to the coming into force of this scheme

FRANCE

44 Same reply as to Question 3

HUNGARY

44 Account should be taken of the rights mentioned in this question

ITALY

44 For the purpose of maintaining rights in course of acquisition, account should be taken of periods antecedent to the coming into force of the scheme

LUXEMBURG

44 There will be serious administrative and financial objections to taking account of periods definitely closed under the existing national schemes The adoption of this principle might seriously endanger the ratification of the Convention

NETHERLANDS

44 For the reason given in the Government's reply to Question 43, the reply to this Question is in the affirmative

POLAND

44. The reply is in the affirmative The international scheme would be deprived of all its value for a long period if it ignored — contrary to all bilateral agreements concluded so far — insurance periods antecedent to the coming into force of the Convention It would be technically impossible to distinguish between periods antecedent and subsequent to the coming into force of the Convention, for it would very often be necessary to effect payment of two benefits. one on the basis of antecedent periods and calculated in conformity with national law, and the other on the basis of subsequent periods and calculated in conformity with the international scheme Such a solution would have no justification whatsoever on social grounds It is on that account that bilateral conventions apply retroactively to periods antecedent to their coming into force

SPAIN

44 The Government replies in the affirmative, acting on the same principles as those on which its replies to previous Questions are based

SWEDEN

44 The reply is in the affirmative

YUGOSLAVIA

44 The Government considers that account should be taken of rights in respect of periods antecedent to the coming into force of the international scheme, at any rate as regards the last ten years.

**45. *(a)* Do you consider that an obligation should be imposed to review awards made before the coming into force of the international scheme, and to review rights for the purpose of reviving them or making an award in pursuance of the scheme, provided that review shall not involve the payment of any arrears or repayment of benefit for the period antecedent to the coming into force of the scheme ?**

***(b)* If so, do you consider that the review should take place :**

***(i)* as a matter of course ?**

**or *(ii)* only at the instance of one of the institutions concerned ?**

**or *(iii)* only at the request of the claimant ?**

***(c)* Do you consider, however, that review should not take place :**

***(i)* where the claim has been settled by a lump-sum payment ?**

***(ii)* where the person concerned was awarded a pension before the international scheme came into force in respect of the institutions of two or more Members participating in the scheme ?**

AUSTRIA

45 *(a)* The reply is in the affirmative

*(b)* The Government considers that the review should take place both as a matter of course and at the instance of one of the institutions concerned or of the claimant

*(c) (i)* The review should not take place where the claim has been settled by a lump-sum payment

*(ii)* In these cases also the review should not take place

BELGIUM

45 *(a)* The reply is in the affirmative

*(b)* In principle, at the request of the claimant, who can always ask for the assistance of one of the institutions concerned

*(c) (i)* and *(ii)* The reply is in the affirmative

BRAZIL

45 *(a)* No, the international scheme should not have a retroactive effect

BULGARIA

45 The reply is in the negative The international scheme should not have a retroactive effect

CHILE

45 Awards already made should not be reviewed

CHINA

45 *(a)* The Government agrees that such an obligation should be imposed

*(b)* It should take place only at the request of the claimant

*(c)* It should not take place in the case referred to in *(ii)*

FRANCE

45 Same reply as to Question 3

HUNGARY

45 *(a)* The review of rights is admissible when the insured person has suffered loss as the result of a settlement effected before the coming into force of the scheme

*(b)* Review should take place only at the request of the claimant *(iii)*

*(c)* In the case of settlement by a lump-sum payment, or when the person concerned was awarded a pension by the institutions of two or more Members adopting the scheme, review should not take place

ITALY

45 As regards revision of the rights alluded to in Questions 43 and 44, the reply to paragraphs *(a)* and *(c)* is in the affirmative With reference to paragraph *(b)*, review should take place as a matter of course

LUXEMBURG

45 If it should be provided that account should be taken of periods already closed which are antecedent to the coming into force of the Convention, the review of awards already made and of rights to be revived or settled under the international scheme should take place only *(a)* on application by the person concerned, and *(b)* when the person concerned has not received old-age or invalidity insurance benefit of any kind whatsoever

NETHERLANDS

45 *(a)* The revision of claims rejected, etc , is justified and the reply is therefore in the affirmative

*(b)* The review should take place only at the request of the claimant

*(c) (i)* Review should not take place where the claim has been settled by a lump sum payment

*(ii)* In this case the review should not be excluded

In addition, the Government desires to emphasise, though it is perhaps unnecessary to do so, that in its opinion there should be no payment of arrears for periods prior to the coming into force of the scheme

POLAND

45 *(a)* The reply is in the affirmative The maintenance without modification of benefits awarded on the basis of national law without taking account of the international scheme would mean the continuation, without valid reason, of the present unsatisfactory legal situation with regard to those benefits

*(b)* The review should take place as a matter of course *(i)* In the event of such a review being made dependent upon the request of the persons or of the institutions concerned, there would be a danger of its taking place in the first case only when it would be advantageous for the insured person and, in the second case, only when it would be advantageous for the insurance institution

*(c) (i)* The reply is in the affirmative It would not appear possible to revive periodical benefits when they have been settled by a lump sum

*(ii)* The fact that the insured person was awarded a pension before the coming into force of the international scheme by the institutions of two or more Members participating in the scheme (such pension amounting possibly, by reason of the non-application of the principle of proportional reduction of the fixed benefit components, to an excessive and unjustifiable sum) should not exclude the application of the international scheme

SPAIN

45 *(a)* The reply is in the affirmative

*(b)* The Government prefers the rule indicated in point *(iii)*. A claim should be made by the person concerned

*(c)* The reply is in the affirmative to points *(i)* and *(ii)*, since these cases have already been settled

SWEDEN

45 *(a)* The reply is in the negative

YUGOSLAVIA

45 Provision should be made for the reviewing of awards made before the coming into force of the scheme, provided that review does not involve the payment of any arrears or repayment of benefit, except possibly in the case of rights in respect of the last ten years The review should be effected at the request of the claimant and not as a matter of course Previous periods of insurance in a foreign country are not as a general rule known to the insurance institution The institutions can defend their rights through the claimants

Review should be allowed even in cases where the claim has been settled by a lump sum payment It is not necessary to undertake

a review in the cases mentioned under 45 *(c) (ii)* If the present situation of the insured person is more favourable he will not ask for review, and if it is less favourable there is no reason to refuse it

**46. Do you consider that Members who, at the date of registration of their ratifications, have not yet set up a scheme of compulsory insurance (or a scheme of non-contributory pensions) covering at least the risk of old age, or that of invalidity also, should by ratification bind themselves to introduce, within the twelve months following the registration of their ratifications, a scheme of compulsory insurance (or non-contributory pensions),**

***(i)* covering the risk of old age ;**
**or *(ii)* covering the risks of old age and invalidity ?**

AUSTRIA

46 The Government approves the suggestion contained in the Grey Report that, in order to secure a Convention of practical value, the Members who adhere to the international scheme should have already established at least a minimum measure of protection against the risks mentioned or should do so by the time their ratification comes into force

It should be mentioned that old-age insurance and invalidity insurance are, to a great extent, identical since the former insurance covers all those cases of invalidity which occur after the age at which the old-age pension becomes payable They may be said, therefore, to be of equal value in practice provided that the age at which the old-age pension becomes payable is not above 65

It should also be added that, as compared with old-age and invalidity insurance, widows' and orphans' insurance is much less important, and should as a rule be regarded merely as a complement to old-age or invalidity insurance

For these reasons, States Members should be required to establish at least a scheme of invalidity insurance or a scheme of old-age insurance providing for the payment of an old-age pension at an age not exceeding 65 years, within twelve months of the ratifying of the Convention, if such a scheme is not in existence at the time of ratification

In the reply to this question no account has been taken of another relevant consideration, namely, that in determining the minimum standard of protection regard should also be paid to the number of persons covered by the insurance scheme of a State Member ratifying the Convention Account is taken of this consideration in the reply to Question 47

BELGIUM

46 *(i)* The reply is in the affirmative

*(ii)* The reply is in the negative

BRAZIL

46 The Government is of opinion that States which ratify the Convention should thereby undertake to establish within a period of three years a scheme of compulsory insurance covering at least the risks of old age and invalidity

BULGARIA

46 The reply is in the affirmative The legislation should cover at least the risks of invalidity and of old-age and the period of grace allowed should be three years

CHILE

46 Yes ; covering the risks of invalidity and old age

CHINA

46 The Government considers that such Members should bind themselves by ratification to introduce the scheme suggested.

FRANCE

46 In the system contemplated by the Government, this question would not arise

HUNGARY

46 The Government prefers the condition indicated under *(ii)* It considers it desirable, however, that Members adopting the scheme should be obliged so far as possible to cover also the risk of death

ITALY

46 Inasmuch as Members adopting the scheme will, by its application, secure privileges and accept duties in regard to the reciprocal treatment of insured persons, they will be unable to do without social insurance legislation While it is impossible to insist on their having a complete scheme of insurance, Members who have none at all should introduce at least compulsory old-age insurance legislation

LUXEMBURG

46 Members who, at the date of registration of their ratification, have not yet established compulsory insurance should by their ratification bind themselves to introduce a scheme of compulsory old-age, invalidity and widows' and orphans' insurance

NETHERLANDS

46 Ratification by a Member which has not established either compulsory old-age insurance or compulsory invalidity insurance would be an advantage only to the nationals of that Member work-

ing in another country Ratification in such circumstances should be excluded and a provision such as is here contemplated should be included in the Convention Members adhering to the scheme ought to be required to set up compulsory invalidity and old-age insurance before the scheme would come into operation for them If no such obligation were included in the Convention, it is to be feared that Members who have an appropriate compulsory insurance scheme would hesitate to ratify it

POLAND

46 The Convention should bind Members, who at the date of the registration of their ratifications have not yet established compulsory invalidity, old-age and widows' and orphans' insurance, to introduce, within twelve months following the registration of their ratifications, compulsory insurance against at least the risk of old-age or that of invalidity

SPAIN

46. The Government replies in the affirmative, with the reservation that non-contributory pensions should not be mixed up with compulsory insurance schemes The Government prefers the condition indicated in point *(i)*

SWEDEN

46. The reply is in the affirmative to *(i)*

YUGOSLAVIA

46 States Members should, by ratifying the Convention, undertake to introduce a compulsory insurance system or a non-contributory pensions scheme covering the risks of old age and invalidity

Old-age insurance should not be regarded as sufficient unless the risk of invalidity is covered by some other branch of insurance, e g if sickness insurance benefit is continued up to the time when the insured person has acquired the right to an old-age pension

Ratification of the Convention should not involve an obligation to introduce widows' and orphans' insurance

47. *(a)* **Further, do you consider that, in order to be able to claim in their entirety the advantages provided by the international scheme in connection with the maintenance of rights in course of acquisition, every Member participating in the scheme must have enacted concerning invalidity insurance, old-age insurance, and widows' and orphans' insurance, legislation fulfilling minimum conditions ?**

*(b)* **If so, what, in your view, should be the minimum conditions to be fulfilled ?**

**(c) If not, do you consider that Members participating in the international scheme, whose legislation covers the three risks of invalidity, old age and death (or only two of these risks) should be able to apply, as regards the maintenance of rights in course of acquisition, special provisions in their relations with any other Member likewise participating in the scheme, but whose law only covers two of these risks (or only the risk of old age) ?**

**(d) If the reply to (c) is in the affirmative, what special provisions should, in your view, be applied in such cases ?**

AUSTRIA

47 (a) The international scheme for the maintenance of rights should apply only if the States participating in the scheme possess a scheme of insurance against the particular risk and for the class of workers (manual workers or salaried employees) in the occupation in question that fulfils certain minimum conditions

(b) These minimum conditions should be set forth in the Convention on the maintenance of rights in course of acquisition and of acquired rights under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another

BELGIUM

47 (a) The reply is in the negative.

(b) This question falls

(c) The reply is in the affirmative

(d) Bilateral agreements

BRAZIL

47 (a) The reply is in the affirmative

(b) The legislation of every State adopting the scheme should be in conformity with the provisions of the Conventions of 1933 on invalidity, old-age, and widows' and orphans' insurance

BULGARIA

47 (a) The reply is in the affirmative

(b) The legislation should conform to the 1933 Conventions on invalidity, old-age and widows' and orphans' insurance

CHILE

47 (a) The reply is in the affirmative

(b) Invalidity, old-age and widows' and orphans' insurance

CHINA

47 *(a)* The reply is in the negative

*(c)* The reply is in the affirmative

FRANCE

47 Same reply as to Question 46

HUNGARY

47 *(a)* It is desirable that Members adopting the international scheme should be obliged to enact legislation on old-age, invalidity and widows' and orphans' insurance fulfilling minimum conditions

*(b)* The Government proposes that the minimum conditions should be the fundamental conditions laid down in Law XL of 1928, published in the I L O Legislative Series, 1928, Hungary No 4

*(c)* Reciprocity between two States should apply only in respect of insurance institutions of the same kind in each of the States

*(d)* If the principle suggested in paragraph *(c)* is adopted, the reduction of cash benefits is not necessary

ITALY

47 Assuming that every Member adopting the scheme is obliged to make provision in its social legislation for compulsory old-age insurance at least, it follows that the minimum conditions which should be fulfilled by such a scheme ought to be laid down Individual States must be allowed to apply in their social legislation measures of welfare which may differ considerably from one country to another and will be in proportion to the economic resources of each It is only fair, however, to require that the basis of insurance shall not fall below what may be considered barely adequate What has been said in regard to old-age insurance applies equally well to invalidity and widows' and orphans' insurance when the corresponding institutions in different countries have dealings with one another for the maintenance of rights in course of acquisition

Granted, however, the need for minimum conditions, it should also be recognised that the other States concerned must fully apply the international scheme for the maintenance of rights in course of acquisition even if the provisions made in their own legislations are more complete and liberal Clearly, if Members whose legislative provisions are on a larger scale are to limit the maintenance of rights in course of acquisition to such branches of insurance as exist on the territory of another Member, given the principle of sharing liability for benefit *pro rata temporis*, corresponding periods of insurance will have to have been spent under the institution of that other Member When no corresponding insurance scheme exists, each Member should apply its own law in the maintenance of rights in course of acquisition

It is, of course, true that often a single law covers two or even all three risks and that the corresponding insurance systems will

overlap inasmuch as certain provisions are common to them, but there should never be any great difficulty in drawing the simple distinction required for the settlement of claims and accordingly there is no need to apply special restrictive provisions

As regards the minimum conditions to be fulfilled by social insurance legislations, the Government is of opinion that, in their broad lines, these conditions should be equivalent to those contained in the corresponding Conventions which were approved in 1933 This applies more particularly to provisions in regard to the scope of insurance, the qualifying period, the right to benefits and the participation of public authorities In the Convention which is to be drawn up, the task of laying down minimum conditions and of seeing whether these are fulfilled in national legislations might be entrusted to the special body mentioned in Question 42.

Accordingly the replies to paragraphs *(a)* and *(b)* of Question 47 are in the affirmative The provisions contemplated in these paragraphs should suffice to protect the interests of Members adopting the scheme The replies to paragraphs *(c)* and *(d)* are in the negative

LUXEMBURG

47 It would be difficult to lay down minimum conditions

Members whose legislation covers the risks of invalidity, old-age and death should have power, in respect of nationals of States whose legislation covers only one or other of these risks, to limit the application of the scheme to the risk or risks covered by those States

NETHERLANDS

47 On this, as on the preceding questions, the difficulties arising in connection with the establishment of an international scheme make themselves felt When all the countries adopting the scheme have approximately equivalent legislation on invalidity, old-age and widows' and orphans' insurance, the objections to an international scheme are at their minimum, the advantages of such a scheme to the nationals of the various countries being in these circumstances more or less equal Countries which had not set up a compulsory insurance scheme such as is here contemplated, or which had an insurance scheme applying to only one of the three risks, could very readily adopt the scheme without having to fear any financial complications for themselves, since for them the Convention would offer only advantages without disadvantages They would have no pensions to pay abroad since they had not set up an insurance scheme The subject could therefore be more appropriately dealt with by bilateral treaties which could be concluded between countries possessing equivalent insurance systems

The Government therefore considers that it must reply in the affirmative to Question 47 *(a)*

*(b)* The minimum conditions should be those laid down in the Draft Convention adopted in 1933 and relating to qualifying periods, invalidity, etc

*(c)* and *(d)* In view of the preceding replies, no reply is necessary to *(c)* and *(d)*

POLAND

47 *(a)* The Government is not in favour of the application of the international scheme concerning the maintenance of rights in course of acquisition being made conditional upon (1) the conjoint introduction of insurance against the three risks in question, and (2) the fulfilment by such insurance of certain minimum conditions. It would, in the Government's view, be quite sufficient were States Members to undertake to introduce a scheme of insurance against one of the two risks referred to in the reply to Question 46. In the event, however, of conditions relative to a minimum standard of insurance being laid down in the Draft Convention, contrary to the negative attitude adopted by the Government and explained above, these conditions should be formulated in such a way that they would apply to invalidity insurance if the State in question possessed invalidity insurance, to old-age insurance if it had old-age insurance, and to one of these two branches of social insurance if it had schemes of insurance against both these risks

*(b)* In the event of the conditions relative to a minimum standard of invalidity, old-age and widows' and orphan's insurance being generally adopted, these conditions should not be too comprehensive but should be relatively modest, and should incorporate for each of the branches of insurance the most essential provisions of the Draft Conventions on Invalidity, Old-Age and Widows' and Orphans' Insurance adopted by the Seventeenth Session of the International Labour Conference In particular, it should be provided that, if the States in question have established schemes of old-age insurance, it would suffice for them to grant, subject to conditions to be laid down by national legislation, old-age pensions when the insured persons have reached an age-limit to be fixed by national legislation, which should not be higher than 65 years in insurance schemes applying to wage-earners If a State has established a scheme of invalidity insurance, it would be sufficient to stipulate (1) that that insurance shall pay invalidity pensions to persons suffering from a general earning incapacity which prevents them from earning any appreciable remuneration by their work, and (2) that the qualifying period necessary before the right to an invalidity pension can be acquired should not exceed 60 contribution months. or 250 contribution weeks, or 1,500 contribution days Stricter obligations would not appear to be justified

SPAIN

47 *(a)* and *(b)* The replies to these two clauses are in the negative, the suggestions being in conflict with the principle on which the whole scheme is based

*(c)* The reply is in the affirmative, without going into details as to the provisions referred to in clause *(d)*

SWEDEN

47 *(a)* and *(b)* No , not as regards all the branches of insurance mentioned

*(c)* The reply is in the affirmative

*(d)* It would probably be necessary in these cases, as in others in which the legislation of the various countries differs in scope, to lay down special rules The best method of laying down such rules might, however, be for the countries concerned to enter into special agreements

YUGOSLAVIA

47 It would be desirable to lay down that, in order to be able to claim the maintenance of rights in course of acquisition, every Member should have enacted legislation concerning invalidity, old-age, and widows' and orphans insurance fulfilling minimum conditions, provided that the international scheme applies to all persons irrespective of nationality in accordance with the system suggested in reply to Question 3 If the application of the Convention is confined to nationals of countries adopting the international scheme, such a restriction might result in excluding the nationals of certain countries which are unable to fulfil the required minimum conditions In the view of the Government this would be unjust

The minimum conditions might be regarded as being fulfilled by any country which had ratified the Conventions concerning the invalidity, old-age, and widows' and orphans' insurance of industrial workers, or if such ratification is impossible, by any country whose national legislation provides benefits equal to those laid down in the Conventions

The body mentioned under 42 should give advice in case of difference of opinion

**48. *(a)* Do you consider that adoption of the international scheme should involve for every Member (in so far as it has not ratified the Draft Conventions adopted by the International Labour Conference concerning compulsory invalidity insurance, compulsory old-age insurance, and compulsory widows' and orphans' insurance) an undertaking to treat the nationals of any other Member participating in the scheme on the same footing as its own nationals for the purpose of entering compulsory invalidity, old-age and widows' and orphans' insurance, and for the purpose of the benefits of such insurance ?**

***(b)* If so, do you consider that this undertaking might be restricted so far as concerns any subsidy, supplement to or fraction of a pension which is payable wholly or mainly out of public funds ? In that case, what restrictions do you propose to lay down ?**

AUSTRIA

48 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

BELGIUM

48 *(a)* The reply is in the affirmative As regards invalidity insurance however, the Government makes certain reserves, being unable to accept any undertaking as to the date of introduction of a scheme of compulsory insurance

*(b)* The reply is in the affirmative Condition of reciprocity

BRAZIL

48 *(a)* No, the equality of treatment provided for by the Conventions of 1933 should not be brought into the Convention on the maintenance of rights

BULGARIA

48 The reply is in the negative Equality of treatment, which is regulated by the 1933 Conventions, should not be dealt with in the Convention on the maintenance of rights

CHILE

48 The reply is in the negative

CHINA

48 *(a)* Yes But the nationals of Members who have not ratified the Draft Convention should be treated on the same footing under this scheme, provided that they have been affiliated in succession to two or more insurance institutions of Members participating in the scheme

*(b)* The reply is in the negative

FRANCE

48 *(a)* The reply is in the negative

HUNGARY

48 *(a)* The Government considers it necessary to prescribe the undertaking indicated

*(b)* There should be no restriction on the undertaking in respect of benefits payable wholly or mainly out of public funds

ITALY

48 The principle of equal treatment for all insured persons, irrespective of nationality, is recognised in the Conventions approved in 1933 Inasmuch as the international scheme may include Members who have not ratified those Conventions and indeed are unable to do so, because their legislations do not conform to them in all respects, it would be desirable to stipulate equality of treatment for nationals of Members adopting the international scheme *(a)*.

Subsidies or fractions of pensions payable out of public funds have already been considered in the replies to Questions 14, 29 and 33 Further, the participation of public authorities, for which provision was made in the 1933 Conventions, has already been suggested as a minimum condition in the reply to Question 47 Nevertheless, with reference to clause *(b)*, restrictions might be allowed in a few definite cases as follows

*(a)* Nationals of Members which have adopted the scheme, but whose legislation does not provide for subsidies or supplements payable out of public funds, assuming that such provision is not included among the minimum conditions,

*(b)* insured persons who migrate from their place of work to another country just as their claim is being settled or immediately after settlement,

*(c)* insured persons who have spent the whole of their occupational career in the insurance of one Member only

It would be better to define, in complementary agreements concluded between the Members concerned, such restrictions as might be adopted

LUXEMBURG

48 Adoption of the international scheme should entail the obligation indicated in *(a)*

There should be no limitation on this obligation

NETHERLANDS

48 *(a)* A Member which has adopted the international scheme should be obliged to assimilate foreigners to its own nationals and to treat foreigners on the same basis as its nationals, subject to a condition of reciprocity in regard to the application of certain provisions If the Convention is to be of use assimilation should apply also to subsidies, supplements, etc If it does not apply, bilateral treaties will be necessary to deal with this matter, a stimulus to the ratification of the Draft Convention will be lost and it will not receive widespread application

POLAND

48 *(a)* The Government does not consider it possible to establish a scheme for the maintenance of acquired rights unless the legal situation of nationals of the other States is settled

It is beyond doubt that among the persons coming under the international scheme a considerable number of the beneficiaries are nationals of other States It would not seem possible, therefore, to achieve the objects of the international scheme in respect of the maintenance of rights acquired and in respect also of the maintenance of rights in course of acquisition in the absence of a regulation of the situation of nationals of foreign States

If the Convention were not to assure equality of treatment, the international scheme in respect of the maintenance of rights acquired would be confined exclusively to the formal maintenance of the rights acquired in the State paying benefits in the event of residence

outside its territory, while disregarding the substance of the rights It would, therefore, be impossible to apply to foreign nationals restrictions due to their residence outside the territory of the State granting the benefits, but all the other restrictions on the rights of foreign nationals would continue to be applicable provided they were also applicable in the event of residence in the country paying the benefits Certain restrictions relative to foreign nationals would thus be abolished, while others — very numerous and burdensome — would be maintained in their entirety The international scheme would, therefore, completely safeguard the interests of the insured persons only in their own countries and not in foreign countries, and this would seem to be in complete contradiction to the objects of the scheme for the maintenance of rights

If the States adopting the international scheme could maintain the application of the restrictions laid down in their legislation in relation to foreign nationals, the results in practice might be both unexpected and undesirable The calculation of the benefits, based on the scheme for the maintenance of rights in course of acquisition, and consisting, for one part, in the proportional reduction provided for under Question 12, might, as a result of such application, be prejudicial to the interests of the foreign nationals concerned, whose benefits would be reduced and also made subject to the restrictions applying to the rights of foreign nationals

Restrictions on account of foreign nationality should not, in principle, be imposed upon any of the beneficiaries of the international scheme irrespective of nationality or even upon beneficiaries without nationality, and this applies to entry into insurance as well as to rights to benefit

In any case provision should be made for at least equality of treatment for nationals of States adopting the international scheme

In the event of the abolition, in conformity with the opinion of the Government expressed under *(b)*, of the power to apply exceptions and restrictions in relation to the receipt of benefits payable out of public funds, the clause providing for equality of treatment should be extended to all States, whether they have or have not ratified the Conventions on Invalidity, Old-Age and Widows' and Orphans' Insurance adopted by the Seventeenth Session of the International Labour Conference These Draft Conventions (Article 12, paragraph 5, last sentence, of the Draft Convention on compulsory old-age insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants, and the analogous provisions of the other Draft Conventions) lay down restrictions relative to the payment to foreign insured persons, in the event of residence abroad, of subsidies, supplements to or fractions of pensions payable out of public funds

Only if, contrary to the opinion of the Government, the proposal contained in *(b)* should be accepted and permission given to apply restrictions to the extent allowed in the above-mentioned Articles of the Draft Conventions, should the principle of equality of treatment be adopted in the Draft Convention for the maintenance of rights solely in relation to those States which have not ratified the Draft Conventions concerning invalidity, old-age and widows and orphans' insurance

In so far as the condition mentioned above is concerned, it should be formulated in such a way as to apply in the branch of insurance in question to those States which have not ratified the Draft Convention dealing with that branch of insurance

*(b)* No restrictions or exceptions to this undertaking should be permitted Foreign nationals in their capacity as beneficiaries should not be accorded a more or less advantageous treatment according to the manner, whatever it may be, in which the cost of the insurance is met

The assimilation of nationals of other States to the nationals of a particular State, which is being increasingly effected by social legislation and bilateral agreements, does not depend exclusively on the participation of those insured persons, by way of contributions, in the provision of the financial resources of the insurance scheme , it rests on far wider and more general premises

SPAIN

48 *(a)* The reply is in the affirmative Such a provision will avoid complications and cases of doubt

*(b)* The reply is in the negative

SWEDEN

48 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative.

YUGOSLAVIA

48 It would be desirable to lay down the proposed obligation, and this should be done in accordance with the replies to Questions 14 and 29

**49. Do you consider that it should be laid down that denunciation by a Member of the Convention establishing the international scheme shall not affect:**

***(a)* the liabilities of insurance institutions in respect of claims which matured before the scheme expired for this Member ?**

***(b)* rights in course of acquisition in respect of periods antecedent to the expiry of the scheme for this Member ?**

AUSTRIA

49 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

BELGIUM

49 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative except in regard to subsidies, supplements to or fractions of pensions payable entirely or mainly out of public funds

BRAZIL

49 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

BULGARIA

49. Denunciation by a Member of the Convention providing for the establishment of an international scheme should not affect

*(a)* the liabilities of insurance institutions in respect of claims which matured before the scheme expired for this Member,

*(b)* Rights in course of acquisition in respect of periods antecedent to the expiry of the scheme for this Member

CHILE

49. *(a)* and *(b)* The replies are in the affirmative

CHINA

49. It should be laid down that such a denunciation by Members shall not affect the liabilities and rights referred to in paragraphs *(a)* and *(b)*

FRANCE

49 *(a)* and *(b)* The reply is in the affirmative

HUNGARY

49 *(a)* and *(b)* The denunciation by a State of the Convention establishing an international scheme should not affect either liabilities already matured or rights in course of acquisition

ITALY

49 The Government considers that the denunciation by a Member of the Convention establishing the international scheme should affect neither claims which matured nor rights in course of acquisition before the expiry of the scheme for this Member *(a)* and *(b)*

LUXEMBURG

49 Denunciation of the Convention should not affect *(a)* the liabilities of insurance institutions in respect of claims which mature before the scheme expires for the Member, *(b)* rights in course of acquisition in respect of periods antecedent to the expiry of the scheme

NETHERLANDS

49 *(a)* Pensions granted in virtue of the international scheme should be granted once for all

The denunciation of the Convention should not affect pensions awarded before denunciation. Nevertheless, the question arises as to whether, when the Convention has expired in respect of a certain country, the payment of pensions to persons residing abroad should not cease

*(b)* The position is quite different in the case of rights in course of acquisition Rights are determined on the happening of the event insured against Take the case of a person who becomes disabled and desires to claim the totalisation of insurance periods for the purpose of completing the waiting period If at the time the Convention is no longer applicable to the institution which would have to pay the pension, the provisions of the Convention can no longer be invoked. The reply to this Question is therefore in the negative

POLAND

49. *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative, provided that the rights in course of acquisition, maintained or revived by the application of the Convention, are not extended as a result of its expiry but continue to be maintained in accordance with the national legislation A more extended maintenance of rights in course of acquisition in respect of periods antecedent to the expiry of the international scheme does not appear possible If the principle were adopted that the rights in course of acquisition in respect of these periods should be maintained on the same conditions as they would be under the international scheme (while subsequent periods would be governed by national legislation), the calculation of benefits under this heading would present insurmountable technical difficulties

SPAIN

49 *(a)* and *(b)* The replies are in the affirmative, this arrangement being, in the Government's view, the most logical and the soundest in law

SWEDEN

49 *(a)* The reply is in the affirmative

*(b)* In principle, the reply might perhaps be in the affirmative.

YUGOSLAVIA

49 Since the denunciation of the Convention should not affect the rights acquired while the international scheme was in force, the provisions mentioned under 49 *(a)* and *(b)* are necessary

**50. *(a)* Do you consider that Members adopting the international scheme should undertake not to depart therefrom by concluding between themselves special treaties which would be incompatible with the international scheme ?**

***(b)* If so, do you consider that the same undertaking should be provided for as regards special treaties concluded between Members participating in the international scheme before the scheme came into force for them ?**

***(c)* If it is your view that the undertaking referred to in paragraph *(a)* should not be required of Members participating in the international scheme, do you consider that they should be empowered to depart from the international scheme by concluding special treaties between themselves, subject to the proviso that such treaties make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable on the whole as those laid down by the international scheme ?**

***(d)* If the reply to *(c)* is in the affirmative, do you consider that the same proviso should apply as regards special treaties concluded by Members participating in the international scheme and before the coming into force of the scheme for them ?**

AUSTRIA

50 *(a)* The reply is in the affirmative

*(b)* The reply is in the affirmative

*(c)* Whether the undertaking referred to is or is not required of Members participating in the international scheme, they should be empowered to depart from the international scheme by the conclusion of special treaties subject to the condition indicated, provided that such special treaties do not make it impossible for the Members who are parties to such treaties to fulfil their obligations under the international scheme towards other Members

*(d)* The reply is in the affirmative

BELGIUM

50 *(a)* The reply is in the affirmative

*(b)* The reply is in the negative

*(c)* The reply is in the affirmative

*(d)* The reply is in the affirmative

BRAZIL

50. *(a)* The reply is in the negative

*(c)* This course seems to the Government to be preferable as being less rigid

*(d)* The reply is in the affirmative

BULGARIA

50 The Government prefers the proposal indicated in paragraph *(d)* as being more flexible

CHILE

50 *(a)* and *(b)* The replies are in the affirmative

*(c)* and *(d)* The replies are in the negative

CHINA

50 The Government agrees with the principles laid down in *(a)* and *(b)*

FRANCE

50 In the system contemplated by the Government, special treaties will regulate all questions of detail, within the limits laid down by the international scheme

HUNGARY

50 *(a)* States Members adopting the international scheme should undertake not to conclude with one another treaties which would be incompatible with the international scheme as regards the rights of insured persons

*(b)* It should be laid down in the Draft Convention that the provisions of treaties concluded between States prior to the coming into force of the international scheme which are less favourable to the beneficiaries cease to have effect

ITALY

50 Members adopting the international scheme should undertake not to depart from it in special treaties and should also undertake to substitute its provisions for those of existing treaties in so far as these are less favourable to the workers' interests. It should be understood that States are at liberty to conclude special agreements supplementing the Convention and in relation to it

In the opinion of the Government, treaties already concluded between Members adopting the scheme *(b)* should be maintained only so far as their provisions relate to matters which are not covered by the international scheme, or are more favourable to the workers than those the scheme contains

LUXEMBURG

50 *(a)* Members adopting the international scheme should undertake not to depart therefrom by concluding between themselves special treaties incompatible with the scheme

*(b)* There should be a recommendation that treaties concluded before the establishment of the new scheme should be revised so as to bring them into conformity with it

NETHERLANDS

50 *(a)* The reply is in the negative The Governments of the various countries ought to be at liberty to conclude special treaties between themselves so far as it appears to them in the interests of their nationals to do so

*(b)* The reply to *(a)* being in the negative, clause *(b)* does not arise

*(c)* and *(d)* The reply is in the affirmative

POLAND

50 *(a)* The reply is in the negative The Government does not consider it necessary to make the international scheme exclusive In expressing an opinion on certain points raised in Questions 13 and 25, the Government favoured the granting of facilities to States Members adhering to the international scheme to depart therefrom by means of bilateral agreements. If States Members were prohibited from doing so, their contractual liberty with regard to social insurance would be more restricted than is generally the case in other domains of international relations The arrangements which, it is presumed, will be adopted in the text of the Convention, although they are becoming increasingly standardised and adopted fairly generally in bilateral treaties, should not be regarded as rigid rules not subject to being tested and revised in the light of experience and the evolution of legislation. If they are to achieve their purpose satisfactorily, Conventions concerning social insurance should lend themselves to the changes which are so often found necessary There are, however, great difficulties in the rapid adaptation, by way of revision, of an International Labour Convention to meet varying requirements, there is so much the less justification, therefore, for binding States to the obligations of an international Convention in so rigid a manner as is proposed in *(a)*

*(b)* The application of the principle suggested under *(a)* to bilateral treaties concluded before the ratification of the Convention is open to still greater objection Such a solution would amount to the abolition, entirely unjustified in so far as the principle of the question is concerned, of the whole body of bilateral agreements, which have settled so many difficult questions satisfactorily

*(c)* The reply is in the affirmative Members should be empowered to depart from the international scheme by concluding special treaties between themselves subject to the condition that such treaties provide a degree of protection of the rights of insured persons at least as favourable on the whole as that provided by the international scheme The Government approves the suggestion to restrict Members' liberty of action in the manner described above

The Government, however, does not attach great practical importance to the condition of equivalence between the special treaties and the international Convention It is not regarded as

probable that Members adopting the international scheme would, in concluding bilateral treaties, act to the detriment of their nationals and so to their own detriment Some objection might perhaps also be taken to the formula given in *(c)*, on the ground that it would be difficult to decide whether the rights of insured persons were protected by a bilateral treaty as favourably " on the whole " as by the international scheme This difficulty could be overcome in great measure by the creation of the special body suggested in Question 42, which would necessarily be entrusted, in cases of this nature, with the safeguarding of the rights of the nationals and insurance institutions of the other States

The Government does not deny, however, that, in spite of the very essential difference between the character of the obligations arising out of this Convention and those arising out of other International Labour Conventions regulating the fundamental principles of social legislation, the granting of unrestricted liberty to States Members to depart from the international scheme by the conclusion of bilateral treaties could be regarded as indirectly dangerous from the standpoint of the juridical character of international labour legislation.

For all these reasons, and subject to the conditions stipulated above, the Government is willing to accept the condition of equivalence indicated in *(c)*

*(d)* The reply is in the affirmative The Government considers that, in the event of the adoption of the principle indicated in *(c)*, the arguments justifying this adoption would also justify its application as regards bilateral treaties existing at the date of the ratification of the international scheme by the States in question Account should also be taken of the fact that many of the bilateral treaties already existing regulate not only invalidity, old-age and widows' and orphans' insurance but also other branches of social insurance , the provisions of those treaties that deal with the maintenance of rights in the domain of invalidity, old-age and widows and orphans, insurance, are generally closely bound up with the provisions relating to other branches of social insurance To annul entirely the operation of these treaties on account of the coming into force of the international scheme would, therefore, not be justified On the other hand, the adoption of the proviso indicated in *(d)* would result in the improvement of the bilateral treaties in respect of any of their provisions which might be below the level of the international Convention

SPAIN

50 *(a)* The rule suggested in this paragraph should, generally speaking, be accepted, but with sufficient elasticity to permit of the adaptation of the system to the special circumstances which may affect the States concerned

*(b)* The Government makes the same reservation as in its reply to clause *(a)*.

*(c)* and *(d)* The provisions suggested in these two clauses should be adopted for the reasons indicated above

SWEDEN

50 *(a)* and *(b)* See the reply given below under *(c)*

*(c)* Yes, special treaties will probably be necessary to settle numerous questions of detail

*(d)* The reply is in the affirmative

YUGOSLAVIA

50 Special treaties should not depart from the international scheme In the case of special treaties concluded before the international scheme came into force a time limit, e g of five years, should be laid down within which they should be brought into harmony with the Convention The time limit might be reduced to one year if the special treaty seriously impeded the application of the Convention

The conclusion of special treaties should only be allowed in so far as it places no obstacle in the way of the application of the Convention, regard being had to countries which are not parties to the treaties

In case of doubt any of the parties concerned could ask for the opinion of the body mentioned under Question 42

## CHAPTER II

# GENERAL SURVEY OF THE PROBLEM IN THE LIGHT OF THE REPLIES OF THE GOVERNMENTS

As already stated in the Introduction, at the time of drafting this Report the Office had received replies to the Questionnaire from the Governments of the following twenty-nine countries *Australia, Austria, Belgium, Brazil, Bulgaria, Chile, China, Denmark, Estonia, Finland, France, Great Britain, Hungary, India, Iraq, Irish Free State, Italy, Japan, Lithuania, Luxemburg, Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland, Union of South Africa, Yugoslavia*

On the question of the principle of international regulation, no definite attitude is taken by seven of these Governments, i.e *Estonia, India, Iraq, Japan, Lithuania, New Zealand* and *South Africa* These countries, which have no practical experience in the matter of compulsory pension insurance, have expressed their interest in the object of the consultation, but do not consider themselves in a position to give definite replies to the various points in the very complex Questionnaire drawn up on the basis of the first discussion This also applies to *Australia*, which has no Federal legislation for compulsory pension insurance at present, and to the *Irish Free State*, the Government of which, while recognising that the subject is one of very great importance in countries in which wide migration movements occur, does not feel justified in replying to the Questionnaire in detail, as the number of migrants between European countries other than *Great Britain* and the *Irish Free State* is negligible, while in the case of *Great Britain* reciprocal arrangements have been made in so far as disablement benefits are concerned

Apart from these replies, which show a very comprehensible attitude of reserve, the Office has received twenty explicit replies, of which fifteen are full and detailed, while the remaining five are of a summary character

## I — Establishment of International Scheme

### Subject-matter and Form of the International Regulations

(Question 1 Replies on pages 14 to 17)

The first Question asked Governments to state whether they considered it desirable that a Draft Convention should be

adopted providing for the establishment of an international scheme operative among Members adopting it, to organise, under compulsory invalidity, old-age and widows' and orphans' insurance, the maintenance of rights in course of acquisition and the maintenance of acquired rights

Replies affirmative both in regard to the objects of the proposed international regulations and to their embodiment in an international Draft Convention were received from the following seventeen States Members *Austria, Belgium, Brazil, Bulgaria, Chile, China, France, Hungary, Italy, Luxemburg, Netherlands, Norway, Poland, Spain, Sweden, Switzerland, Yugoslavia*

Most of these replies recognised the importance of establishing an international scheme for the maintenance of rights in compulsory pension insurance, and the few reservations made relate only to the degree of protection to be provided.

The *Brazilian* Government considers that only a minimum standard should be established, since if the standard were too high the Draft Convention might not be acceptable to countries of immigration

The *French* Government, while recognising the desirability of establishing an international scheme for the maintenance of rights considers that assimilation of nationals of all the contracting States should be provided for only in respect of the maintenance of rights relating to benefits provided by the contributions of the insured person and of the employer. It should be left to special treaties between the States concerned to effect assimilation of the nationals of the contracting States in respect of benefits derived from State subsidies and to settle certain other questions which cannot be regulated without taking into account the conditions peculiar to each contracting State

The *Swiss* Government states its views as to specific points in the proposed Draft Convention, but declares that it must adopt an attitude of reserve in replying to the Questionnaire as there is no Federal legislation in Switzerland concerning compulsory old-age and widows' and orphans' insurance

Only one reply, that of the Government of *Finland*, proposes that the international scheme should take the form not of a Convention but of a Recommendation which might serve as a basis for treaties of reciprocity between the interested States

The other two replies received to the first Question come from the Governments of *Denmark* and *Great Britain*

The *Danish* Government considers that it has insufficient experience to answer the questions relating to the maintenance of rights in course of acquisition, as the Danish legislation on old-age and widows' and orphans' pensions is on a non-contributory basis, while Danish invalidity insurance cannot

be said, strictly speaking, to be a compulsory scheme The maintenance of acquired rights, on the other hand, is conditional on residence in the country, a condition which, in the Government's opinion, might be waived under special circumstances in accordance with treaties of reciprocity, but not by means of a general international Convention

The *British Government*, after drawing attention to the very small volume of migration of insured workers from the United Kingdom to other countries and *vice versa*, points out that under the British schemes of insurance for invalidity pensions and old-age, widows' and orphans' pensions, insured persons become entitled to the maximum rate of pension after the completion of very short qualifying periods Thus a worker migrating to the United Kingdom from any other country would qualify for the maximum benefits in respect of invalidity, and the maximum rate of widows' and orphans' pension after being insurably employed in the United Kingdom for 104 weeks and the payment of 104 weekly contributions, and to the maximum rate of old-age pension after being employed for five years A migrant would therefore secure the full protection afforded under the British scheme within a few years of his taking up employment in the United Kingdom In these circumstances it does not appear to the British Government that any useful purpose would be served by an attempt to reply to the detailed questions included in the Questionnaire, which are framed on the basis that rates of pension are dependent on duration of insurance At the same time, the Government recognises that the proposed system for the maintenance of rights is of great importance to countries having pension schemes in which the rate of pension is dependent on the duration of insurance, and does not desire to place any obstacles in the way of the drawing up of an appropriate Draft Convention

The seventeen replies out of the total of twenty explicit replies which are favourable to the adoption of a Draft Convention and the attitude of benevolent neutrality adopted by the Governments which state that they are not directly interested in the proposed scheme, suggest a definite possibility of establishing an international scheme for the maintenance of pension rights The Office is fully aware of the technical and other difficulties involved, but in view of the results of the consultation of Governments in regard to the object and form of the proposed international scheme, it is bound to submit to the Conference a preliminary Draft Convention to establish an international scheme for the maintenance of rights in course of acquisition and of acquired rights in compulsory pension insurance

## II — Maintenance of Rights in Course of Acquisition

### Definition of Beneficiaries

(Question 2 Replies on pages 18 to 20)

This definition was not open to doubt. It was asked whether, for the purpose of the maintenance of rights in course of acquisition, the international scheme should apply to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme and to the dependants of such workers

The question had a twofold purpose first, to establish that in order to enjoy the protection afforded by the international scheme the worker should have been affiliated to insurance institutions in at least two countries which had adopted the scheme, and secondly, to ensure that transfers between insurance institutions within the same country should remain outside the international scheme

Out of fifteen replies received to this question, only one was unfavourable, — that of the *French* Government, which considered that the definition of the beneficiaries of the international scheme should be left to separate agreements between the States Members.

The other replies are all unreservedly favourable and come from the following countries *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

The definition of beneficiaries proposed in the Questionnaire is therefore accepted by fourteen Governments

The Government of the *Netherlands* observes that the international regulations should also apply to workers resident in frontier zones who, without changing their domicile, may change their employers, thus becoming subject to the insurance scheme of another country To this pertinent suggestion the *Netherlands* Government adds the further proposal that the regulations should also apply to workers who transfer their residence without entering the insurance scheme of the second country

The Government of *Yugoslavia*, while accepting the proposed definition, considers that it does not go far enough, and would like to see it extended to cover non-contributory pension schemes It therefore proposes that periods of employment or residence in countries with such schemes should be taken into account in the same way as periods of affiliation to insurance institutions

In the light of these replies from the Governments it would seem that, for the purpose of maintaining rights in course

of acquisition, the international scheme should apply to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme and to the dependants of such workers.

To leave the definition of the beneficiaries of the international scheme to special agreements between States as proposed by the *French* Government would irrevocably deprive the scheme from the outset of all consistency In so far as this proposal affects the exclusion of special insurance schemes it will be dealt with below (Question 7).

The suggestion of the *Yugoslav* Government that, for the purpose of maintaining rights in course of acquisition, periods of employment or residence in countries with a non-contributory pension scheme should be assimilated to insurance periods, appears to go far beyond the general lines laid down in the course of the first discussion at the 1934 Session, which took non-contributory pensions into account only in respect of acquired rights and from the standpoint of their assimilation to insurance pensions payable outside the country of the institution liable Under non-contributory pension schemes there can hardly be a question of rights in course of acquisition, since the right to a pension is determined only at the time when the pension becomes payable, and no individual expectation based on a contribution made by or on behalf of the person concerned can be distinguished before that time.

There remains the suggestion of the *Netherlands* Government that the international regulations for the maintenance of rights in course of acquisition should also cover workers who transfer their residence to another country without entering insurance In order to maintain their rights in course of acquisition in the country they have left, and in so far as the validity of their contributions is not automatically maintained, these workers must have recourse to the facilities provided under the law of the country of emigration, that is to say, as a rule, to voluntarily continued insurance. Actually, however, these facilities are available only to insured persons resident in the country. To remove this restriction it would be necessary to provide that the rights in course of acquisition by workers who had been insured in one of the countries should not be prejudiced by the fact that these workers transfer their residence to any other country which has adopted the international scheme. The proposal to extend the international regulations to cover workers who go to reside in another country without becoming liable to its insurance was considered in the course of the first discussion, but rejected The Office would therefore hesitate to put it forward again in view of the decision at last year's Conference not to submit it to Governments for their consideration.

## Nationality of Beneficiaries

(Question 3 Replies on pages 20 to 22)

The political status of migrants may serve as the criterion for a more restrictive definition of the beneficiaries than that provided under Question 2 , for example, the advantages of the international scheme may be available, not to all persons irrespective of nationality, but only to nationals of States which have adopted the scheme

Governments were therefore consulted as to whether the international scheme should apply to all persons irrespective of nationality or only to nationals of the Members adopting the scheme In the latter contingency an additional question was put as to the inclusion in the scheme of all persons without nationality

Sixteen replies were received and were divided as follows ·

ten proposing that the scheme should apply to all persons irrespective of nationality ,

five proposing that the scheme should apply only to nationals of Members adopting it ,

one, the reply of the *French* Government, suggesting that the question should be settled by special agreements between the States

The application of the scheme to all persons irrespective of nationality is approved by the Governments of the following countries *Belgium*, *Chile*, *China*, *Hungary*, *Italy*, *Poland*, *Spain*, *Sweden*, *Switzerland*, *Yugoslavia*

No reservations are made by any of these countries The *Italian* Government, however, observes that although nationality should not be taken into account in respect of benefits relating to contributions from the insured persons and the employers, it might be used as a criterion to restrict the grant of benefits out of public funds This distinction will be taken up in a later connection (Question 13). The *Yugoslav* Government, while approving the wider solution, suggests the possibility of excluding the nationals of States Members which deliberately fail to adopt the international scheme

The following countries are in favour of the application of the international scheme only to nationals of Members adopting it *Austria*, *Brazil*, *Bulgaria*, *Luxemburg*, *Netherlands*

The Governments of *Brazil* and *Luxemburg* consider that the scheme should also apply to persons without nationality

There is thus a clear majority in favour of applying the scheme for the maintenance of rights to all persons without distinction of nationality, and this corroborates the tendency observable in most bilateral treaties of recent date The maintenance of rights in course of acquisition is no longer

regarded as a privilege to be reserved for the nationals of the contracting countries, but as a general rule enabling migrants of any nationality to obtain in any country the return for the payments made on their account The results of the consultation of Governments indicate that the international scheme should sanction this tendency at least in so far as benefits relating to the contributions of insured persons and employers are concerned

## Totalisation of Insurance Periods for Maintaining Rights

(Question 4 Replies on pages 23 to 28)

The primary object of the arrangements for the maintenance of rights must be to facilitate the maintenance of rights in course of acquisition. National schemes in which each contribution represents a single premium which purchases a deferred annuity and retains its validity indefinitely and irrespective of any subsequent payments are in the minority. Under all other schemes the validity of each contribution is only maintained automatically for a prescribed term, since the financial stability of the scheme depends on contributions being paid on account of every insured person more or less regularly throughout his working life These contributions do not give the insured person an unconditional right, but merely a possibility of acquiring a right, subject to the maintenance of the validity of his contributions

The purpose of Question 4 was to lay down the principle of the totalisation of insurance periods for maintaining rights in course of acquisition and then to define the periods that should be taken into account for the purpose of this totalisation

The question therefore referred first to contribution periods completed with any of the institutions concerned, and secondly to periods in respect of which contributions were not payable but during which rights were maintained under the law of all or of at least one of the institutions concerned As the definition of these assimilated periods differs under different national legislations, Governments were asked to indicate whether periods in respect of which contributions are not payable but during which rights are maintained under the law of at least one of the institutions concerned should be eligible for totalisation, or only periods during which rights are maintained under the law of the institution which is totalising

(a) *Contribution Periods*

All the fifteen replies which are explicit on this point consider that for the purpose of maintaining rights the contribution periods completed with any one of the institutions

concerned should be totalised. These replies come from the Governments of the following countries *Austria, Belgium, Brazil, Bulgaria, Chile, China, France, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain, Sweden, Yugoslavia*

(b) *Assimilated Periods*

Out of fourteen explicit replies — the *French* Government considering that the totalisation of assimilated periods should be regulated by special treaties between the States Members — none is opposed to the principle of the totalisation of assimilated periods

As regards the precise definition of these periods opinion is somewhat divided

Eight Governments recommend the wider solution

Six Governments recommend the restrictive solution

The totalisation of periods in respect of which contributions are not payable but during which rights are maintained under the law of at least one of the institutions concerned is approved by the Governments of the following countries *Austria, Belgium, Hungary, Italy, Netherlands, Poland, Spain, Sweden*

The *Austrian, Belgian* and *Swedish* Governments point out very appositely that every period must be treated in accordance with the insurance law under which it was completed, which signifies that all periods treated as assimilated periods by the law applicable to the migrant at the time must be taken into account even if they are so treated by that law alone

Other Governments stress the necessity of adopting the wider solution which they recommend The *Spanish* Government regards this as the only solution enabling the desired results to be fully achieved The *Italian* Government considers this solution as the only way to prevent rights recognised by one country in virtue of contribution periods and assimilated periods from being invalidated in another country, because its law does not allow the assimilation of some of the periods taken into account by the first country. The *Netherlands* Government supports its preference for the wider solution by citing the example of a worker who has been insured first in country A and subsequently in country B, and who, on falling sick, is exempt from the payment of contributions throughout the period of his sickness under the law applicable to him at that moment (i e. the law of country B) , for the purpose of maintaining his rights this period of sickness exempt from contributions should also be totalised in country A The *Polish* Government prefers the wider solution on the principle that so long as the migrant maintains the rights he is in course of acquiring in one country these rights should not lapse in respect of other countries, as otherwise migrants would be constantly obliged to consider, in the light of the legislation

of each country in which they have been successively insured, how they could secure the eventual maintenance of their rights in course of acquisition

The restrictive proposal to limit totalisation exclusively to those periods assimilated to contributions periods under the law of the institution which is totalising, is recommended by the Governments of the following countries: *Brazil, Bulgaria, Chile, China, Luxembourg, Yugoslavia.*

The reason given by the *Yugoslav* Government, which is the only one to state its reasons, is that migrants should not be given greater privileges than other insured persons

The majority of the replies are thus in favour of totalising periods in respect of which contributions are not payable but during which rights are maintained under the laws applicable to the migrant during the respective periods This solution, the adoption of which is justified by the results of the consultation, is both simple and correct, since all it requires of the worker is that he should conform to the law applicable to him at every stage of his insurance career

## Totalisation for Maintaining Rights *(cont.)*

(Question 5 Replies on pages 23 to 28)

The rights which the migrant is in course of acquiring in one country must be maintained not only during contribution periods and assimilated periods, but also while the migrant is drawing a pension from an insurance institution in another country Otherwise the migrant to whom a pension is granted in one country would lose the rights based on his contributions in the other

Governments were therefore asked to state whether they considered that for the purpose of maintaining rights in course of acquisition the periods to be totalised should comprise:

*(a)* periods during which a pension is paid by an invalidity insurance, old-age insurance, or widows' and orphans' insurance institution of any other Member adopting the international scheme,

*(b)* and also periods during which a pension or other cash benefit is paid by another branch of social insurance of another Member adopting the scheme in so far as a corresponding pension or other cash benefit paid under the law of the institution which is totalising would maintain rights in course of acquisition

All the fourteen replies received to this question recommend the maintenance of rights in one country during periods when a

pension is paid to the migrant by an invalidity insurance, old-age insurance, or widows' and orphans' insurance institution of any other Member adopting the international scheme These replies come from the Governments of the following countries : *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

The *Netherlands* Government adds that periods during which a pension is paid should be totalised only when the insured person is exempt from the obligation to pay contributions while he is in receipt of a pension under the national legislation in virtue of which the pension is paid

The *Yugoslav* Government replies in the affirmative in respect of periods during which a pension is paid by an invalidity or old-age insurance institution in any other country, provided that a corresponding pension paid under the law of the institution which is totalising would maintain the rights in course of acquisition , but it does not consider that the periods to be totalised should also comprise those during which a pension is paid to a migrant under the widows' and orphans' insurance scheme of another Member This restriction is obviously justified, since there is no reason why the rights of a woman worker or salaried employee to an invalidity or old-age pension should be maintained merely because she happens to be drawing a widow's pension under the law of another country

The following Governments have declared themselves in favour of the maintenance of rights for invalidity, old-age, and widows' and orphans' insurance during periods in which a pension or other cash benefit is paid by another branch of social insurance of another Member adopting the international scheme *Austria*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

The *Netherlands* Government specifies that these periods should only be eligible for totalisation, if, under the legislation in virtue of which the pension is paid, there is no obligation to pay compulsory invalidity, old-age, and widows' and orphans' insurance contributions while the pension is being drawn

The *Swedish* Government considers that the legal consequences of the receipt of corresponding benefits ought to be settled in accordance with the law of the institution with which the person concerned was insured during the period in question

The results of the consultation on this point justify the proposal that, for the purpose of maintaining rights in course of acquisition, the periods to be totalised should comprise periods during which a pension or other cash benefit is paid

either by an invalidity and old-age insurance institution or by any other branch of social insurance of another Member adopting the international scheme, provided that such rights would be maintained by a corresponding pension or other cash benefit under the law of the institution which is totalising

## Totalisation for Reckoning Qualifying Period

(Question 6 Replies on pages 29 to 32)

The question of the totalisation of insurance periods also arises in connection with the reckoning of the qualifying period or of the number of contributions required to confer the right to special benefits Every insurance institution which has to decide whether the qualifying period or any particular conditions for entitlement to special benefits is fulfilled, takes into account not only the periods spent under its own law, but also those spent under the laws of other Members adopting the international scheme

Here again the Questionnaire sought, first, to lay down the principle of totalisation for the purpose of reckoning the qualifying period, and subsequently to define the periods to be counted

The principle of the totalisation of insurance periods in reckoning the qualifying period could hardly be open to doubt

As regards the exact periods to be totalised, the first to be taken into account are naturally contribution periods Apart from these, however, periods in respect of which the insurance institution has received some form of payment for the maintenance of the rights relating to them have also to be considered, i e periods credited in return for a lump-sum payment on entry into insurance, periods of unemployment covered by payments from unemployment insurance funds, or from an unemployment guarantee fund, etc

But it is not only contribution periods which must be counted in reckoning the qualifying period. National legislations also provide for the assimilation of certain periods in respect of which no contributions were paid, such as periods of temporary disablement due to sickness or childbirth, periods of involuntary unemployment not covered by payments, etc. These assimilated periods for the purpose of reckoning the qualifying period are always defined restrictively, and a limit is also often set to the number of them which may be taken into account This may either be an absolute limit (e.g 26 or 52 weeks in all) or in relation to a given unit of time (e g 13 weeks in any one year) The definition of assimilated periods is very strict under some insurance laws, and more loosely drawn under others

In order to determine the extent to which assimilated periods should be taken into account under the international

scheme, the Governments were asked to state whether, in addition to contribution periods, the periods to be totalised should comprise periods in respect of which contributions are not payable, but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions for entitlement to special advantages, such as guaranteed minimum pensions under the law of at least one of the institutions concerned, or only under the law of the institution which is totalising

(a) *Contribution Periods*

All the replies received to this question (fifteen in all) are in the affirmative They agree that, for the purpose of reckoning the qualifying period (minimum duration of insurance) or the number of contributions conferring the right to particular benefits, the periods to be totalised should comprise all those spent with any of the institutions concerned The countries which replied in this sense are as follows: *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *France*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

(b) *Assimilated Periods*

Of the fourteen replies giving an explicit answer in regard to the taking into account of assimilated periods (the *French* Government preferring to leave the matter to special agreements), six are in favour of the wider solution and eight of the restrictive solution.

The wider solution proposing the totalisation of periods in respect of which contributions are not payable, but which are counted in reckoning the qualifying period under the law of at least one of the institutions concerned, is supported by the Governments of the following countries *Austria*, *Belgium* *Hungary*, *Netherlands*, *Spain*, *Sweden*

The *Austrian*, *Belgian* and *Swedish* Governments again point out, as on the question of the counting of assimilated periods for maintaining rights (Question 4), that each period should be dealt with in accordance with the law of the insurance institution under which it was spent, which signifies that the periods to be totalised in reckoning the qualifying period should comprise all periods recognised by the law applicable to the migrant at the time, even if they are recognised by this law alone In other words, if the law of country A treats as contribution periods only periods of sickness, and the law of country B treats as contribution periods both periods of sickness and periods of unemployment, the insurance institution of country A must take into account, in reckoning the qualifying period, not only periods of sickness, but also periods of unemployment recognised under the law of country B alone and spent in the latter country.

The *Netherlands* Government explains its position by stating that periods in respect of which no contributions have been paid should be totalised only if non-payment of the contributions is in accordance with the national legislation applicable to the insured person during the period of non-payment

The solution limiting totalisation to contribution periods and periods assimilated to contribution periods under the law of the institution which is totalising is recommended by the Governments of the following countries *Brazil*, *Chile*, *China*, *Italy*, *Luxembourg*, *Poland*, *Yugoslavia*.

The reply of the *Bulgarian* Government appears to support the restrictive solution, for although it is in the negative as regards the totalisation of assimilated periods, it does not contemplate the exclusion of periods assimilated by the law of the institution which is reckoning the qualifying period and spent under that law

The *Italian* Government supports its preference for the restrictive solution by the observation that, although it seems fair to adopt the more liberal system of totalising periods for the purpose of maintaining rights, the same does not apply in respect of the reckoning of the qualifying period, which represents the minimum duration of insurance prescribed for entitlement to specific benefits For the latter purpose it does not seem possible to go beyond the provisions made by each State for workers insured only under its own law

The *Polish* Government also declares itself opposed to the inclusion, in reckoning the qualifying period, of assimilated periods which are not generally provided for by national legislation merely because such periods are taken into account under the legislation of another State in which the worker had been insured The length of the qualifying period is such an essential condition for the right to a pension under invalidity, old-age and widows' and orphans' insurance that to grant a privilege in this respect to migrants might be considered as excessive

It is clear that, for the purpose of reckoning the qualifying period, the periods to be totalised should include contribution periods completed with any one of the institutions concerned. On this point opinion is unanimous

As regards assimilated periods, the majority of the replies are in favour of limiting totalisation to periods treated as assimilated periods under the law of the institution which is totalising. It would therefore seem that this solution should be adopted The periods are considered with reference to the law applicable to the migrant during the respective period, each institution taking into account those periods which are assimilated to contribution periods under its own law.

## Totalisation with Respect to Special Insurance Schemes

(Question 7 Replies on pages 32 to 36)

In many countries there exist special insurance schemes set up on behalf either of persons employed in certain occupations such as miners, or of certain social classes, such as salaried employees or professional workers Under these schemes higher benefits are provided for, but also higher contributions, than under the general inter-occupational scheme. The transfer from a general to a special scheme should not have the effect of injuring the latter If workers insured successively under a general scheme and under a special scheme were able to have credited to them the time spent by them under the general scheme at its face value, not only for the purpose of maintaining their rights but for reckoning the qualifying period, they would be better treated than persons who had been continuously insured under the special scheme Here, therefore, there arises a question of equity on the national as well as on the international plane.

Governments were therefore consulted as to whether restrictions should be placed on the totalisation of insurance periods for reckoning the qualifying period where the national law of one of the Members concerned subjects the grant of certain advantages to the condition that the periods must have been spent in an occupation covered by a special insurance scheme, it being proposed that in such cases only periods spent under the corresponding special insurance scheme of the other Member or Members concerned should be totalised for the purpose of reckoning the qualifying period or the prescribed number of contributions This restriction would in any case not affect the maintenance of rights, in respect of which periods spent under the general scheme or under a special scheme would both be taken into account

A variant of the suggested restriction was also submitted for the consideration of Governments in the form of the question whether, where there does not exist a special insurance scheme for a given occupation in one of the States Members corresponding to that in force in the other, periods spent in that State in the occupation concerned under a non-corresponding scheme should be totalised for the purpose of reckoning the qualifying period, and, if so, whether totalisation should be effected compulsorily or at the discretion of the institution reckoning the qualifying period

Thirteen replies received to this question approve the proposed restriction in cases where the national law of one of the Members subjects the grant of certain advantages to the condition that the periods must have been spent in an occupation covered by a special insurance scheme These replies come

from the Governments of the following countries *Austria, Belgium, Brazil, Bulgaria, Chile, China, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain, Yugoslavia.*

Several of these Governments, while accepting the restriction, make suggestions as to its closer definition The *Spanish* Government accepts it while refusing to recognise an absolute separation between the general scheme and the special schemes, a condition which is taken into account by the variant submitted to the Governments and mentioned above The *Hungarian* Government also approves the proposed arrangement while suggesting an additional provision, namely that when, under the national law of one of the Members concerned, the period spent under a general scheme has to be reckoned together with the period spent under the special scheme, the reciprocal totalisation of the periods spent under the two different schemes should be obligatory, even in relations between States This suggestion is compatible with the proposed restriction, it being understood that, for the purpose of reckoning the qualifying period under a special scheme in one country, account is taken only of the period spent under the corresponding special scheme of the other country

The *Yugoslav* Government, while accepting the proposed solution, considers that in determining the periods to be totalised it is desirable to take as a basis the legislation of the country in which the insurance period was spent If this legislation takes account, for the purpose of reckoning the qualifying period and the prescribed number of contributions, of affiliation to a special insurance scheme for the purpose of a corresponding special insurance scheme in the same country, the rule adopted by it should be applied to the same extent in the international sphere This suggestion is ingenious, and has much to be said in its favour, but its application would necessary be limited in advance to countries having more than one special insurance scheme

The variant framed with a view to making the proposed solution applicable as between countries one of which does and the other does not possess a special scheme for a given occupation, reads as follows .

" Where, however, there does not exist in one of the States Members a special insurance scheme for the occupation in question, do you agree that periods spent in that State in the occupation in question under a non-corresponding scheme should be totalised for the purpose of reckoning the qualifying period ? "

An affirmative answer was returned by the Governments of the following countries *Austria, Brazil, Bulgaria, Chile, China, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain, Yugoslavia*

Of these Governments, nine considered that totalisation should be effected compulsorily, while the other three *(Brazil, Bulgaria, Chile)* recommend that it should be left to the discretion of the institution reckoning the qualifying period.

The *Yugoslav* Government further suggests, in regard to the application of this variant, that totalisation should be carried out in full only if the two insurance schemes concerned are at least equivalent If such is not the case, an equalisation constant or fixed assimilation ratio should be established for the sake of simplicity ; it might be provided, for instance, that periods spent under a non-corresponding insurance scheme should be reckoned at only half their actual duration in totalising for the purpose of reckoning the qualifying period

These replies suggest that both the restriction and the variant proposed during the first discussion should be maintained. Where the national law of the Member concerned subjects the grant of certain advantages to the condition that the periods must have been spent in an occupation covered by a special insurance scheme, only periods spent under the corresponding special insurance scheme of the other Member or Members concerned should be totalised for the purpose of reckoning the qualifying period or the prescribed number of contributions Where, however, no special insurance scheme exists for the occupation in question in one of the States Members, periods spent in the occupation under a non-corresponding scheme should be totalised for the purpose of reckoning the qualifying period

Before turning to the next question, reference must be made to the suggestion of the *French* Government that the scheme for the maintenance of rights in course of acquisition should apply only to social insurance schemes which are general in scope, including special schemes for miners and salaried employees or professional workers, and should not be extended to special schemes such as those in force in France for workers and employees on railways (national lines and secondary or local lines, tramways), naval conscripts, employees of public authorities, etc. This suggestion appears to be motivated solely by the special nature of the insurance schemes or institutions concerned, without affecting the workers in the occupations concerned as such, who, like railway employees or seamen, are often covered by the general scheme as well as by a special occupational scheme Nevertheless, it would seem that this exception should be admitted, and indeed will be admitted by force of circumstances, in respect of pension schemes set up by special regulations or rules which, owing to the conditions of recruiting and engagement in force in the undertakings they cover, are barred to foreign workers.

The *Polish* Government calls attention to the fact that there may be some difficulty in drawing a strict line of demarcation between general schemes and special schemes. It may sometimes happen, as under the Polish legislation concerning miners' pensions, that special provision is made under the general inter-occupational scheme for the risks and needs peculiar to workers in a given occupation In such cases higher rates of contribution are prescribed for workers in this occupation, conferring on them in return the right to benefits on easier conditions and at higher rates than are applicable to other insured persons In this way a special occupational scheme is created in law and in fact within the general inter-occupational scheme, and account should be taken of this circumstance in applying the international scheme.

## Totalisation for Recovery of Rights and for Right to Enter Voluntary Insurance

(Question 8 Replies on pages 36 to 38)

### (a) *Totalisation for Recovery of Rights*

Social insurance laws which allow the free maintenance of rights in course of acquisition for a certain term only and subject to the resumption of payments under compulsory or voluntary insurance usually allow the insured worker an opportunity of recovering his lost rights The payment of a specified number of fresh contributions will restore the rights acquired in virtue of lapsed contributions, the strictness of the conditions for the recovery of rights by this means varying with different legislations. The number of new contributions required must reach a specified minimum, which may sometimes vary with the age of the insured person when payments are resumed or with the length of the interruption in payments.

The provisions governing the recovery of rights under national legislation are of particular interest to migrants, and the bilateral treaties applicable to insurance schemes under which facilities are provided for the recovery of lost rights therefore lay down that insurance periods completed in either country may be taken into account for this purpose.

The Governments were therefore asked whether they considered that the rules for the totalisation of insurance periods for the purpose of reckoning the qualifying period should also apply to the recovery of rights

The fifteen replies received are all in the affirmative, and the Office therefore concludes that these rules should also apply to the recovery of rights

### (b) *Right to enter Voluntary Insurance*

Under most national laws persons formerly insured who are not drawing a pension are allowed to continue in insurance

voluntarily, subject as a rule to the condition that a prescribed minimum of contributions have been paid on their account This precaution is intended to prevent the entry into insurance of persons who neither have been nor are normally occupied as wage earners

It would, however, be contrary to the purpose of social insurance to exclude from voluntary insurance migrant workers who have perhaps been insured for many years in the country of emigration For this reason the bilateral treaties provide that insurance periods spent in either of the contracting countries shall be totalised for the purpose of determining the right to enter voluntary insurance.

Fourteen Governments are in favour of applying the rules for the totalisation of insurance periods for the purpose of reckoning the qualifying period to the right to enter voluntary insurance, only one reply, that of the *Bulgarian* Government, being in the negative

## Reckoning of Concurrent Periods

(Question 9 Replies on pages 38 to 39)

Insurance periods spent simultaneously in two or more countries should count once only for the purpose of totalisation. Failing this rule, a migrant who continued his insurance in the country of emigration while also liable to insurance in the country of immigration would be able to complete the qualifying period more quickly than other insured persons. The purpose of totalisation is not to place migrants in a privileged position in relation to other insured persons, and it is this fact which has given rise to the rule mentioned above

This rule was submitted to the Governments for their opinion, and all the replies received, fifteen in number, are in the affirmative Contribution periods and assimilated periods spent simultaneously in two or more States Members participating in the scheme should be reckoned once only for the purpose of totalisation

## Disregard of Short Periods

(Question 10 Replies on pages 40 to 43)

Certain treaties take account for the purpose of totalisation only of periods exceeding a prescribed minimum duration with the same institution or with several institutions in the same country This restriction is imposed only for reasons of administrative convenience, and aims at relieving the insurance institution of the necessity of keeping for a whole generation the accounts of workers only temporarily insured with it

The principle of disregarding periods which do not exceed a certain minimum duration is accepted by seven replies, seven others being opposed to it

Affirmative replies were received from the Governments of the following countries *Brazil, Bulgaria, Chile, Luxemburg, Spain, Sweden, Yugoslavia*

The replies of these Governments, although all in favour of disregarding short periods, vary in regard to the subsidiary question as to whether the minimum must have been spent entirely under a particular institution or under a particular national scheme The Governments of *Bulgaria* and *Luxemburg* are in favour of the first solution, and the other Governments of the second, while the *Yugoslav* Government is prepared to accept either

As regards the fixing of these minimum periods, the suggestions received range between thirteen and fifty-two contribution weeks Thirteen weeks or seventy-five days are proposed by *Spain* and *Luxemburg*, six months by *Yugoslavia* (if the minimum must have been spent under a particular institution), seven months by *Chile*, fifty-two weeks or twelve months by *Brazil, Bulgaria* and *Yugoslavia* (if the minimum must have been spent under a particular national scheme)

The following countries are opposed to the disregarding even of short periods *Austria, Belgium, China, Hungary, Italy, Netherlands, Poland*

The *Belgian* Government replies in the negative only in respect of that part of the pension which is constituted on the accumulation system, while accepting the disregarding of short periods in respect of benefits formed on the assessment system

The *Hungarian* Government draws a further distinction, considering that short periods should not be disregarded in respect of the maintenance of rights in course of acquisition, but that for the purpose of completing the qualifying period and of the other conditions for the acquisition of rights, only contribution periods of more than twelve weeks spent under the same national scheme should be taken into account

The *Italian* Government observes that to disregard periods falling below a specified minimum may make it impossible to complete the qualifying period Non-completion of this period, however, involves the loss of all rights, and it must therefore be recognised that all insurance periods, however short, are extremely important to the insured person and should consequently be comprised in the totalisation for the purpose of reckoning the qualifying period The reasons for disregarding such periods could only be based on administrative convenience, but there can be no great difficulty in keeping a record even of short periods, and if allowance is to be made for the totalisation of successive periods even where they are not

consecutive a continuous record will in any case be essential. The disregarding of a short period of three months, for instance, might deprive a migrant who had in fact paid contributions for the whole period required for qualification of all his rights

The *Netherlands* Government is definitely opposed to the disregarding of short periods, considering that there is no reason why a short insurance period should not be taken into account in totalising

The *Polish* Government likewise considers it unnecessary to fix a minimum below which periods would be disregarded in effecting totalisation The exclusion of insurance periods of even a relatively short duration spent in another country might be prejudicial to migrants or their dependants Considerations of administrative convenience might justify the disregarding of minimum periods for the purpose of the proportional reduction of benefits by a country in which insurance periods of longer duration had been spent, as well as the non-payment of benefits by a State under the insurance scheme of which such short periods had been spent, but they do not justify depriving, by the exclusion of very short periods from totalisation, insured persons or their dependants of insurance benefits from all the States concerned

There is no majority of replies in favour of disregarding short periods spent under one national scheme or under a particular institution, and sound arguments have been put forward to support the inclusion of all periods, however short On this basis it may therefore be suggested that all periods of whatever length spent in one of the countries concerned should be taken into account for the purpose of totalisation

It is very rightly pointed out by some Governments that the disregarding even of short periods might deprive the migrant of all his rights both in the country of emigration and in the country of immigration. The reasons of administrative convenience put forward to justify the disregard of minimum periods are not without force, but they are nevertheless not strong enough to prevail where the very purpose of insurance is at stake Moreover, the inclusion even of short periods for the purpose of totalisation does not exclude the possibility of adopting another clause referred to at a later stage (Question 17) to provide that periods which in the aggregate fall below a specified minimum should not entail liability for benefit on an institution which would otherwise be liable, provided that liability for these periods is assumed by another institution

### Appraisal by each Institution of Rights of Claimant

(Question 11 Replies on pages 43 to 44)

When the event insured against occurs, each insurance institution which has received contributions in respect of the

migrant determines under its own law alone whether the claimant — account being taken of all insurance periods — satisfies the prescribed qualifying conditions

This rule is accepted without reservation by all the Governments which replied to the question, namely those of the following countries. *Austria, Belgium, Brazil, Bulgaria, Chile, China, France, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain, Sweden, Yugoslavia.*

The Office is therefore justified in adopting the principle that each institution, while totalising the periods to be counted, shall determine only in accordance with its own law whether the claimant satisfies the prescribed qualifying conditions.

### Calculation of Benefit due from each Institution

(Questions 12 and 13 Replies on pages 45 to 52)

Each insurance institution with respect to which the migrant fulfils the qualifying conditions prescribed by its law calculates according to that law the amounts due in respect of each benefit component.

If all the benefit components varied with the contributions paid to this or that institution, the rule just formulated would result in a fair distribution of the liability for benefits among the institutions concerned. This rule, however, is no longer adequate in other cases, and cannot therefore be regarded as sufficient in itself. In order to reach an agreement which is at once equitable for the migrants and acceptable for the remainder of the insured, each institution must be authorised to reduce by a specified proportion those benefits or benefit components determined independently of the time spent in insurance and consisting either in a fixed sum or in a percentage of the average wage or average contribution of the insured person

In accordance with the decisions taken during the first discussion, the following rules were submitted to the Governments for their opinion.

*(a)* Benefits (benefit components) varying with the time spent in insurance

Each institution with respect to which the claimant satisfies the qualifying conditions determines the amount in accordance with its own law, having regard only to periods counted for the purpose of calculating benefits under that law.

*(b)* Benefits (benefit components) determined independently of the time spent in insurance :

In this case only benefits or benefit components determined independently of the time spent in insurance (save the qualifying period) are to be reduced in the proportion :

*(i)* either of the periods counted for the purpose of calculating benefits under the law of the institution to the total of the periods counted for the purpose of calculating benefits under the laws of all the institutions concerned ,

*(ii)* or of the contribution periods spent under the law of the institution to the total of the contribution periods spent under the laws of all the institutions concerned

Should these rules not seem sufficiently explicit for application to the various types of benefits the Governments were also requested to indicate what modifications or additional provisions they considered desirable

The *French* Government considers that the method of calculating the benefit for which each institution is liable should be regulated by special agreements between the Members, while the other Governments, fourteen in all, recommend that appropriate rules should be laid down in the Draft Convention

In spite of their empirical character, the rules proposed to the Governments represent an approximation declared acceptable by most of the replies received Certain reservations and modifications are, however, suggested by the *Italian*, *Netherlands* and *Yugoslav* Governments, which will be dealt with after discussing the general results of the consultation

No objection is raised to the principle of the rule that no reduction shall be made in the benefits or benefit components varying with the time spent in insurance and determined solely on the basis of the periods counted for the purpose of calculating benefit and spent under the institution's own law

As regards the reduction applicable to benefits or benefit components determined independently of the time passed in insurance, eight Governments *(Austria, Hungary, Italy, Luxemburg, Poland, Spain, Sweden, Yugoslavia)* prefer to base this reduction on the period counted for the calculation of benefits , and four *(Brazil, Bulgaria, Chile, China)* on the contribution period It is therefore proposed to adopt the first solution providing that the benefits or benefit components determined independently of the time spent in insurance may be reduced in the proportion of the periods counted for the purpose of calculating benefits under the law of the institution to the total of the contribution periods spent under the laws of all the institutions concerned This solution may be regarded as the right one, since, as pointed out by the *Yugoslav* Government, it increases the share of benefit payable only

where the institution liable for it takes into account in determining benefit periods in respect of which no contributions were paid

It now remains to discuss the suggestions put forward by certain Governments as to any modifications or additional provisions which might be introduced in order to enable the rules proposed under Question 12 to be applied without ambiguity in every case These suggestions bear mainly on the distinction between the benefits falling under *(a)* above and those falling under *(b)* According to the draft submitted to the Governments, benefits determined independently of the time spent in insurance belong to the second group, and those varying with the time spent in insurance to the first.

The *Italian* Government (see pp. 47-49) points out the difficulties which might be met with when attempting to classify benefits in these two categories, showing that a benefit varying with the time spent in insurance may also sometimes depend on other factors, while in the case of other benefits it is not always strictly true to say that they are determined independently of the time spent in insurance This reply dwells more particularly on the problem which arises when a benefit component is fixed in proportion to the average contributions paid, pointing out that this component can hardly be regarded as independent of the time spent in insurance if it varies not only with the contribution period but with any interruptions in payment Two insured persons on whose account the same aggregate contributions have been paid would receive different benefits, to the advantage of the one who had spent the shorter time in insurance

In order to overcome this difficulty the *Italian* Government suggests that the rules laid down under Question 12 should be replaced by some other arrangement eliminating the distinction between the two classes of benefits It proposes that all benefits should be calculated on the basis of all the periods counted for the purpose of calculating benefit under the laws of all the institutions concerned, and that all alike should be subject to reduction

The Office has therefore to consider whether it would be advisable to abandon the system embodied in the rules given under Question 12 which had in fact already been accepted by the Governments in their replies It concluded that it would be preferable to retain these rules and to concentrate on solving the difficulties involved in distinguishing between the two classes of benefit These difficulties, which arise from the empirical nature of the proposed rules and were referred to in the course of the first discussion, seem on closer scrutiny to be more apparent than real

It may be pointed out in the first place that the notion of the " time spent in insurance " was adopted as the basis

for the classification of benefits only in default of a better one It is clear that this notion must not be taken in any absolute sense and that in distinguishing between benefits belonging to the first and second class the main problem is to establish whether or not the time spent in insurance is an essential criterion Each benefit must be considered not in the light of its current description but of its components, that is to say, of the true nature of the method of its constitution To refer again to the case instanced by the *Italian* Government of a benefit component proportionate to the average of all the contributions paid from the date of entry into insurance until the event insured against takes place, it is evident that while the time spent in insurance may indeed enter into consideration, it is not an essential criterion for the calculation of the benefit To illustrate this by a concrete example, we may take the case of an insured person who remains in the same wage-class throughout his insurance career It is clear from this instance that the time spent in insurance enters into account only because it enables any variations in the regularity of the contributions to be spread over a longer period, but where the frequency of the contributions is uniform, the benefit concerned is quite independent of the time spent in insurance Hence benefits calculated in this way fall into category *(b)* and are therefore subject to reduction

The reply of the *Italian* Government also indicates how the average wage or average contribution for the whole of the periods counted for the purpose of calculating benefit under the laws of all the institutions may be defined It may be recalled that this problem was raised during the first discussion in connection with the calculation of the average wage and that three possibilities were considered Each institution might take into account in determining benefits *(i)* the wage actually received by the insured person during his residence abroad, *(ii)* the average wage of all insured persons for each year of the migrant's residence abroad; or *(iii)* the wage received by the insured person during the periods of his insurance under the law of the institution concerned Returning to this question, the *Italian* Government suggests that each institution should reckon the contribution paid during the periods recognised by the other institutions on the assumption that it is equivalent to the average annual contribution paid during periods spent under its own law Taking this method of calculating the average contribution, and referring both to the example cited and the rules proposed by the Italian Government, it will be seen that the same result is reached as by the application of the rules given under Question 12

The Government of the *Netherlands* points out that under the law of that country no wage-earner can be admitted to

compulsory insurance for the first time after reaching the age of thirty-five years This restriction was waived by a clause in the treaty concluded with Belgium for the benefit of workers who entered insurance under the Belgian compulsory insurance legislation before the age of thirty-five years, but the Netherlands Government considers that, although a provision of this kind may well be included in a bilateral treaty, it cannot be laid down in an international Convention.

The *Yugoslav* Government also has some remarks to make concerning the classification of benefits into the categories provided under paragraphs *(a)* and *(b)* of Question 12. In its opinion (see pp 50-52), no formal distinction should be attempted, and it stresses the necessity, already referred to in the report drafted by the Office in preparation for the first discussion, of isolating that part of the total benefit which is virtually a fixed component It instances the case where a benefit component (supplement) is added to the fixed sum (basic pension) for every contribution paid after the completion of the qualifying period, and proposes that a part of the basic pension, calculated in accordance with the rule applied for the subsequent period should be regarded as corresponding to each year of the qualifying period The fixed component, which would then be the only part of the benefit subject to reduction, would consist of the difference between the basic pension and the total of the supplements attributed, for the purposes of calculation, to the years constituting the qualifying period This solution has already been applied to the Yugoslav miners' pension scheme in the treaties concluded with Germany (Article 18, section 4) and Austria (Article 27) It has the advantage of establishing a form of equalisation between the benefits of the various schemes, and may be borne in mind with a view to facilitating the application of the rules under Question 12

Subject to these observations and in consideration of the general tenor of the replies, the Office considers that the rules framed on the basis of the first discussion should be maintained.

## Application of Reduction Rules to Subsidies, Supplements or Allowances payable out of Public Funds

(Question 14 Replies on pages 53 to 55)

A contribution from the public authorities is provided for under almost all insurance schemes covering employed persons in general or manual workers

In so far as the contribution of the public authorities takes the form of a supplement proportional to the contributions paid in respect of each insured person, no difficulty arises in

the case of migrants Each country reckons the supplements for which it is liable in proportion to the number and amount of the contributions paid under its law. Where the subsidies or supplements are determined independently of the time spent in insurance the question arises as to whether the rule of reduction *pro rata temporis* previously laid down should apply to these benefit components.

The Governments were asked to state whether they considered that the reduction rule given under Question 12 should also apply to subsidies, supplements or allowances payable mainly or wholly out of public funds

Before discussing the replies received on this point it may be pointed out that the question was strictly limited in scope. It was not desired to consult the Governments as to the constitution of these subsidies, supplements or allowances payable out of public funds, the calculation of these components for the purpose of the international scheme for the maintenance of rights being the sole aspect requiring elucidation. The question was further restricted in that it was not designed to define the beneficiaries of the supplements or allowances concerned, since the question of equality of treatment in respect of these benefits as between the nationals of all Members adopting the international scheme is dealt with separately (Question 48) So far as the international scheme is concerned, the latter question is indeed closely connected with that of the calculation of these benefits within the national scheme concerned, but only those replies which relate to the method of calculating benefit components derived from contributions from public funds will be summarised here.

Out of fifteen replies, eleven deal with the point at issue and four are negative

The *Brazilian* and *Bulgarian* Governments consider that the benefits or benefit components payable wholly or mainly out of public funds should be left entirely outside the proposed international scheme, that is to say, the grant and calculation of these benefits should be governed exclusively by the national law of each Member, which would not enter into any kind of undertaking in this respect The reply of the *Chilean* Government is also in the negative, while the *French* Government advises recourse to special diplomatic agreements between Members

All the other replies, with one exception, recommend the application to subsidies, supplements or allowances payable out of public funds of the rules applicable to other benefit components These replies come from the following Governments · *Austria*, *Belgium*, *China*, *Hungary*, *Italy*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

The Government of *Luxemburg*, on the other hand, is of the opinion that all subsidies, supplements or allowances payable out of public funds should remain the exclusive liability of the country of residence of the migrant or his dependants

The majority of the replies are thus in favour of the solution already adopted in a number of bilateral treaties Each country should be liable in their entirety for supplements and allowances proportionate to the payments made on account of each insured person as laid down by its own law, those supplements and allowances determined independently of the time spent in insurance being eligible for reduction *pro rata temporis*.

## Application of Reduction Rules where only one Institution is Liable for Benefit

(Question 15 Replies on pages 55 to 57)

The rule under which benefits or benefit components determined independently of the time spent in insurance may be reduced applies normally when the insurance institutions of two or more countries are simultaneously required to pay their share of the pension to a migrant.

What is the position however when a single institution is liable for benefit, the conditions for entitlement under the law of the other institution or institutions not yet being fulfilled ? Is the institution which alone is liable for benefit entitled to reduce the fixed components ? The answer to this question depends on whether the right to benefit from this institution is based on totalisation, or on insurance periods spent exclusively under the law of the institution concerned

The Governments were asked to state whether the reduction rule should apply where a claimant is entitled to benefit from only one institution, and is so entitled only as the result of the totalisation of insurance periods

Of the fourteen explicit replies received, twelve agree with the application of the reduction rule to fixed components in the case considered, and two *(China, Luxemburg)* are opposed to it

The favourable replies come from the Governments of the following countries *Austria, Belgium, Brazil, Bulgaria, Chile, Hungary, Italy, Netherlands, Poland, Spain, Sweden, Yugoslavia*

The *Italian* Government considers that the reduction rule should apply when the qualifying period has been completed

solely in virtue of totalisation, but not when the whole of the qualifying period has been spent under the law of the institution concerned

The *Netherlands* Government approves the application of the reduction rule in the case considered, but not if the migrant is entitled to claim a pension under the law of the particular country without recourse to totalisation and in virtue only of the insurance periods spent with the institution which is liable.

The *Yugoslav* Government is of the same opinion The reduction rule enables the institution to recoup itself for some of the extra charges placed upon it by the payment of benefits due to migrants in consequence of the totalisation of insurance periods When the institution is liable in virtue of the periods spent under its own law alone the protective clause proposed under Question 18 should come into play

It appears from these replies that fixed benefit components should be subject to reduction when the claimant is entitled to benefit from one institution only, and is so entitled only as a result of the totalisation of insurance periods. This is a logical consequence of the proposed scheme, under which the reduction of fixed benefits or benefit components to some extent counterbalances the totalisation of insurance periods Only a clear decision in the opposite sense, excluding the possibility of reduction in the case considered, would have justified the inclusion in the Draft Convention of a special derogatory clause.

## Power not to apply Reduction Rules where Claimant is Entitled to Maximum Pension

(Question 16 Replies on pages 58 to 60)

This question is the converse of the preceding one. It refers only to one particular case, that of a migrant who has acquired the right to the maximum pension from the institution with which he was last insured in virtue solely of those periods during which he was insured with that institution

It was considered desirable to obtain the opinion of Governments as to whether power should be given to the institution with which the migrant was last insured not to apply the reduction rule in cases of this kind

The replies show several different tendencies

In the first place there are some categorically affirmative replies which go beyond the scope of the question by proposing to exclude any reduction in the case considered, whereas the point of the question was whether or not power should be given not to apply the reduction rule to the maximum

pension. The Governments which reply in this sense are those of *China* and *Spain*, the latter noting further that non-application of the reduction rule in this case should be not merely optional but compulsory once the claimant has acquired the right to the maximum pension from the institution with which he was last insured

The following Governments expressly agree that power should be given not to apply the reduction rule in the case considered *Brazil, Chile, France, Hungary, Italy, Luxemburg, Sweden*

The *Italian* Government observes that the question concerns only those legislations under which all benefits are determined independently of the time spent in insurance. As the provision concerned is merely permissive and in any case is to the migrant's advantage, the *Italian* Government will not raise any objection provided that the maximum pension granted by the institution with which the migrant was last insured is supplemented by the shares of benefit for which the other institutions with which the migrant has been insured are liable

The following Governments are opposed to, or regard as unnecessary, the inclusion in the proposed Draft Convention of a clause concerning the maximum pension · *Austria, Belgium, Bulgaria, Netherlands, Poland, Yugoslavia*

The *Austrian* Government points out that the institution with which the migrant was last insured is at perfect liberty not to apply the proposed reduction rule whether the Draft Convention so provides or not The *Netherlands* Government regards it as a matter of indifference whether the claimant was last insured with an institution the law of which provides for a maximum pension, and notes further that no reduction should be effected when the claimant is entitled to the maximum pension without recourse to totalisation The *Yugoslav* Government considers that the proposal is not in accordance with the general rule formulated under Question 12 The *Polish* Government is opposed to the inclusion of the suggested clause even in an optional form. There can be no reason for imposing the burden of paying the maximum pension on an insurance institution solely because the migrant was last affiliated with that institution, and the rule provided under Question 18 affords sufficient protection Moreover, the definition of what constitutes the maximum pension under the various national laws would be a matter of some difficulty

The object of this question was merely to ascertain whether it would be desirable to include in the Draft Convention a proposal which should entail no kind of obligation, but constitute a kind of appeal to the institution to which the migrant

last belonged to refrain from making use of its power to reduce the maximum pension. Seeing that objections have been raised to this proposal the Office deems it wiser to withdraw it, particularly as a purely optional recommendation of this kind would do nothing to strengthen the real protection provided for migrants.

## Non-application of Reduction Rules in Respect of Short Periods

(Question 17. Replies on pages 60 to 63)

The majority of bilateral treaties dispense from all liability those insurance institutions with which the migrant has only spent altogether a very short period of insurance, with the object of freeing the institution concerned from the unduly onerous duty of paying small pensions. In order that the migrant's interest should not be injured it is stipulated at the same time that no reduction of benefit shall be effected by any of the other insurance institutions concerned in respect of periods which in the aggregate do not exceed a certain minimum, and on account of which no benefit is paid by the institution which would otherwise be liable.

This twofold rule protects the migrant from any loss since the periods which do not count towards benefits from one institution are taken into account by the other or others

It was decided at the first discussion in 1934 that Governments should be asked whether they proposed to permit that periods which in the aggregate fall below a certain minimum should not entail liability for benefit on an institution or institutions which would otherwise be liable, and if so, whether this minimum must have been spent under a particular national scheme or entirely under a particular institution, and lastly, whether the liability for the periods which in the aggregate fall below a specified minimum and do not entail liability for benefit from the institution with which they were spent should be assumed by the other institution or institutions concerned.

(a) *Minimum periods which do not entail liability for benefit from the institution or institutions which would otherwise be liable*

Out of fifteen replies on this point, twelve are in the affirmative and two in the negative, while one, that of the *French* Government, recommends that the matter should be left to special agreements between the Members

The negative replies come from the Governments of *China* and the *Netherlands* The latter observes that the suggestion in the question conflicts with the fundamental principles of the proposed scheme, but gives a detailed reply in case it should nevertheless be further considered

The affirmative replies come from the following Governments *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *Hungary*, *Italy*, *Luxemburg*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*.

The *Belgian* Government replies in the affirmative only in respect of benefits constituted on the assessment system, considering that the question is pointless in respect of schemes based on the capitalisation system

The *Italian* Government points out that there are several ways in which the administrative difficulties connected with the payment of small pensions might be overcome, but it does not object to the inclusion of a clause providing that periods falling below a certain minimum should not entail liability for benefit.

The replies thus show a large majority in favour of including in the Draft Convention a clause providing that periods which in the aggregate fall below a certain minimum should not entail liability for benefit on an institution or institutions which would otherwise be liable

(b) *Calculation of minimum periods*

This point being established, it is necessary to decide whether these short periods must have been spent under a particular national invalidity or old-age insurance scheme or entirely under a particular institution.

On this aspect of the problem thirteen replies were received, ten of which considered that the short periods in question should have been spent under a particular national scheme. Only the Governments of *Austria* and *Bulgaria* support the solution that the periods should have been spent entirely under the same institution, while the *Yugoslav* Government would accept both methods subject to a different duration being fixed in each case

There is therefore a clear majority in favour of counting all periods spent under a particular national scheme of invalidity or old-age insurance for the purpose of reckoning the minimum periods

(c) *Method of fixing the minimum*

Most of the replies are in favour of a specified minimum fixed without regard to the total time spent in insurance by the migrant

Proposals in regard to the length of the minimum period range from contribution periods of twelve weeks to three years as follows : 12 weeks *Hungary ;* 150 days, 26 weeks or six months *Poland*, *Spain*, *Yugoslavia* (entirely under a particular institution), 52 weeks, 12 months or a year : *Austria*, *Brazil*, *Bulgaria*, *Luxemburg*, *Yugoslavia* (under a particular national scheme), two years : *Chile ;* three years : *Belgium.*

The *Netherlands* Government does not suggest any definite figure, but considers that any minimum period fixed should be very short

The *Italian* Government does not consider it advisable to fix a definite term, since the significance of a one-year period will be very different according as three or five years are necessary for qualification It would be preferable to fix a minimum which would be proportionate to the total length of the migrant's insurance career, for instance, one-twenty-fifth or one-thirtieth, the advantage of this method being that the minimum would always bear a fixed ratio to the benefits payable by the other institutions

The Office therefore proposes the adoption of a fixed minimum of 52 contribution weeks or one year, but considers that the idea of a variable minimum suggested by the *Italian* Government should also be borne in mind.

(d) *Non-application of the reduction rule in respect of periods below the minimum fixed spent with another institution*

It remains to consider whether the other institution or institutions concerned should not apply the reduction rule in respect of short periods which do not entail liability for benefit on the part of the institution with which they were spent.

Unreservedly favourable replies were received from the Governments of the following countries · *Austria, Brazil, Bulgaria, Chile, Hungary, Luxemburg, Netherlands, Poland, Sweden, Yugoslavia*

The *Italian* Government considers that Question 17 *(d)* covers two cases to which different solutions may be applied If the claim to benefit is based on the totalisation of all insurance periods, including the periods below the fixed minimum which do not entail liability on the part of the institution which would otherwise be liable, the other institutions should be entitled to take into account even periods below the fixed minimum when reducing their share of benefit If, on the other hand, the claim to benefit can be established without regard to these short periods and only one institution is liable, there should be no reduction , but if several institutions are liable, apart from that with which the short periods were spent, the reduction should be based on the total of the periods excluding short periods

A negative reply was received from the *Spanish* Government, which accepts the possibility of reduction on account of the short periods which do not entail liability for benefit from the institution with which they were spent

It may therefore be proposed that insurance periods spent under a particular national scheme of invalidity or old-age insurance which in the aggregate fall below 52 contribution weeks need not entail liability for benefit on the part of the

institution or institutions with which they were spent, and that no reduction shall be applied by any of the other institutions concerned in respect of periods which do not entail liability for benefit.

### Protective Clause

(Question 18. Replies on pages 64 to 68)

The object of the arrangements for the maintenance of rights in course of acquisition is to protect the interests of migrants by enabling them to obtain a return for the payments made on their behalf in the various countries in which they have been insured. Since, however, the insurance institutions are entitled to reduce the fixed benefit components for which they are liable, it may happen in particular cases that the total of the benefit reckoned by all the institutions concerned falls short of the benefit which a single institution would have had to pay under its own law alone, so that in such cases the maintenance scheme would operate to the migrants' disadvantage.

In order to avoid this contingency the majority of bilateral treaties guarantee to migrants who are entitled to benefit in two countries a joint pension equal to that which they would have obtained in respect of periods spent in one country alone. With this safeguard, known as the protective clause, the total figure obtained by adding all the parts of the benefit can never be smaller than the benefit payable under the law of a single country.

As this clause appears to safeguard the legitimate interests of migrants, the Governments were asked whether they considered it desirable to include a similar guarantee in the Draft Convention. If so they were also required to state how the complementary benefit should be calculated and by which institution it should be payable, the latter point being capable of several solutions according to the number of institutions concerned.

(a) *Principle of protective clause*

Thirteen affirmative replies were received on this point and one negative *(Belgium)*, while the *French* Government recommends that the matter should be regulated by separate agreements between the Members.

The replies of the following Governments are in the affirmative. *Austria*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*.

The *Austrian* Government remarks that it has replied in the affirmative in order to facilitate the adoption of the Draft Convention, but that it nevertheless has certain reservations to make.

The principle of the inclusion of a protective clause is thus accepted by a majority of Governments

(b) *Operation of protective clause*

When there is a difference between the total of all the shares of benefit payable by all the institutions concerned and the benefit which would be payable by one institution alone in respect of periods spent under its own law only, the effect of the protective clause is to oblige this institution to add the difference to its own share of benefit.

All the explicit replies received to this question considered that the complementary benefit resulting from the operation of the protective clause should be paid by the institution which would otherwise have profited by the difference. This solution is approved by the Governments of the following countries *Austria, Brazil, Bulgaria, Chile, China, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain, Yugoslavia*

The *Yugoslav* Government rightly points out that the complementary benefit is not an additional charge on the institution concerned, which in the absence of any international scheme would be liable for even higher benefits, since it is in any case relieved of the burden of the benefits due from the other institution or institutions

(c) *Calculation and distribution of liability for complementary benefit where several institutions are concerned*

The protective clause is also applicable to a migrant who has been successively insured in three or more countries adopting the international scheme In such a case two or even three of the institutions might be required to pay complementary benefit. It must therefore be determined firstly how much complementary benefit the insured person should receive, and secondly, how liability for this amount should be shared between the various institutions

The Governments were asked to state whether, where several institutions were concerned, they would agree that the complementary benefit should be reckoned according to the amount of the highest complementary benefit which would be due from any one of these institutions, the liability for it to be distributed among them in proportion to the complementary benefit which would have been due from each individually

This proposal was accepted by the Governments of the following countries *Austria, Brazil, Bulgaria, Chile, China, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain, Yugoslavia*

The suggestion may therefore be retained for inclusion in the Draft Convention At the same time, however, the Office

considers that the alternative proposal made by the *Yugoslav* Government (see p. 67) should also be borne in mind, suggesting the adoption, out of the various possible arrangements, of that which would lead to the payment of the highest complementary benefit, a proposal which is all to the migrant's advantage and is therefore recommended to the notice of Governments The reply of the Yugoslav Government also deals with the case of one institution being obliged to pay a pension while the other is liable for the payment of a lump sum. To determine the complementary benefit in this case it would be necessary to calculate the value of the lump sum in terms of a pension, a uniform method of calculation being prescribed for all Members adopting the international scheme

### Maximum Limit for Total Benefit

(Question 19 Replies on pages 68 to 70)

To counterbalance the protective clause introduced in favour of the migrants, several bilateral treaties include a clause to protect the interests of the insurance institution This, which may be called the *maximum benefit clause*, limits the total of the various shares of benefit payable by the institutions with which the migrant was successively insured to the amount of the benefit which would have been payable by the institution governed by the most favourable law if the whole period of insurance had been spent with that institution

This formula was submitted for the consideration of Governments, who were also asked to state whether any reductions on this account should be effected proportionally on each portion of the total benefit.

Of the fifteen replies received to this question, nine are affirmative and six negative

The following countries replied in the affirmative : *Brazil*, *Bulgaria*, *Chile*, *France*, *Hungary*, *Luxemburg*, *Netherlands*, *Spain*, *Sweden*

These Governments agree both to the principle of reduction and to its application proportionally on each part of the total benefit. The *French* Government, however, considers that the rules governing reductions under this clause should be left to separate agreements between States.

The Governments of the following countries are opposed to the introduction of a maximum benefit clause *Austria*, *Belgium*, *China*, *Italy*, *Poland*, *Yugoslavia*

Two of these countries, *Belgium* and *Italy*, are parties to bilateral treaties containing a maximum benefit clause, but they do not appear to be in favour of including a like provision in the proposed international scheme

The countries replying in the negative lay particular stress on the difficulty of determining which is the most favourable

law The *Austrian* Government considers that it would be virtually impossible to apply the clause in practice. The *Italian* Government points out that it would entail a comparative analysis of the different laws and complicated actuarial calculations, since it would be incorrect to take the pension rates prescribed under the different laws as the sole criterion. A law which provides for lower pension rates than another might still be the more favourable because it allows the total or partial reversion of the pension in the event of the insured person's death The *Polish* Government anticipates administrative complications while that of *Yugoslavia* thinks that the clause would give rise to various difficulties.

Although there is a majority in favour of the principle of a maximum benefit clause, its inclusion in the Draft Convention is strongly opposed by some countries and would no doubt meet with severe opposition

It therefore seems wiser to propose the introduction of a purely optional clause, providing that Members might conclude agreements to ensure that the total of the benefits granted by all the insurance institutions should be limited to that which would be due in respect of all the periods to be counted from the institution having the most favourable law, full freedom being left to the Members concerned to decide the method of applying this reduction

### Medical Treatment and Care

(Question 20 Replies on pages 70 to 73)

Several bilateral treaties contain clauses dealing with the right of migrants to medical care If and in so far as there exists under any one of the schemes with which the migrant has been insured a right to medical benefit, account is to be taken of all insurance periods for the purpose of determining whether this right has been acquired Medical treatment cannot be organised by more than one insurance institution, which will be that of the migrant's place of residence, and the cost is either borne by that institution or shared by all the institutions with which the migrant has successively been insured

The Governments were asked whether they considered it desirable to entrust the institution of the place of residence with the provision, for persons who, on the ground of invalidity, would be entitled to claim a pension, of treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity If so, they were also asked to state whether the other institution or institutions concerned should share in the cost of such treatment and care

Fifteen explicit replies were received to this question, eleven being favourable and four unfavourable to the inclusion in the Draft Convention of a provision concerning medical treatment and care

Unfavourable replies were received from the Governments of the following countries: *Brazil*, *Bulgaria*, *Netherlands*, *Poland*.

The *Brazilian* and *Bulgarian* Governments observe that, as under most national invalidity insurance schemes medical benefits are not compulsory, it would be difficult to lay down a general rule as to the distribution of the cost of medical treatment between the institutions concerned. The *Netherlands* Government points out that the conditions for the granting of medical treatment vary widely from country to country, and it therefore considers that the international scheme should leave aside the question of benefits in kind. The *Polish* Government is of the same opinion, considering that the sharing of the cost of medical treatment and care should in any case be regulated by agreements between the Governments or institutions concerned.

The *Italian* Government, without expressly opposing the international regulation of medical treatment and care, emphasises the discrepancies between the various national laws and the practice of the different insurance institutions in this respect. It would hardly be possible to formulate a general rule placing liability for the provision of medical treatment and care exclusively on the institution of the migrant's country of residence.

On the other hand, affirmative replies were received from the Governments of the following countries: *Austria*, *Belgium*, *Chile*, *China*, *France*, *Hungary*, *Luxemburg*, *Spain*, *Sweden*, *Yugoslavia*.

These replies, however, are in agreement only as regards the desirability of entrusting the institution of the place of residence with the provision of treatment and care. As regards the distribution of the cost of such treatment, opinion is divided.

The Governments of *Chile* and *Luxemburg* are opposed to the sharing of the cost of treatment, considering that this should be borne exclusively by the institution of the place of residence.

The *Belgian* and *French* Governments consider that rules for the provision of treatment and for the distribution of its cost between the institutions concerned should be left to special agreements.

Two Governments, those of *Hungary* and *Sweden*, recommend that medical care should be provided by the institution of the place of residence and support the principle of distributing the cost between the various institutions, without, however, suggesting any definite rules.

Lastly, four replies (*Austria*, *China*, *Spain*, *Yugoslavia*) propose that provisions to regulate the share of the cost of medical benefit should be included in the Draft Convention.

The *Austrian* Government would like to limit these provisions to treatment for the purpose of alleviating or curing invalidity, the expenses being shared between the institutions in proportion to the shares of pension for which each is liable The *Chinese* Government also suggests that the cost should be distributed in proportion to the shares of pension. The *Spanish* Government considers that it would be neither equitable nor expedient to allow migrant workers to be deprived of benefits in kind which are provided for insured persons in general, as regards the cost of these benefits, the best method would be to distribute it proportionally to the contribution periods spent with each institution The *Yugoslav* Government considers that the institution of the migrant's place of residence should be made responsible for the provision of medical treatment if the latter is provided for under the national law concerned, and if not, by the compulsory sickness insurance institution of the place of residence Any one of the institutions concerned should be empowered to demand treatment, but it should only be provided with the previous consent of the institution or institutions liable for the largest share of the total pension The cost of treatment should be divided proportionally to the amount of the pension due from each of the institutions concerned

Most of the replies are favourable to the inclusion in the Draft Convention of a clause concerning medical care and treatment If the right to treatment and care depends on the length of insurance, totalisation must be effected in accordance with the rules prescribed for the purpose of reckoning the qualifying period in order to determine this right

As regards the distribution of the cost of medical treatment and care, no definite rule emerges from the replies of the Governments It is therefore proposed to leave this matter to agreements freely concluded between Members, failing such agreements, the institution which provided the treatment should remain liable for its cost

## Submission of Claims for Benefit

(Question 21 Replies on pages 74 to 75)

Unless they are expressly dispensed from the obligation to do so, migrants must conform in every country with the regulations applicable to other insured persons, and in particular must submit their claims for benefit to each institution separately In order to make it easier for migrants to secure recognition of their rights, a number of bilateral treaties authorise them to apply to only one of the institutions, the date at which the application reaches this institution being deemed to be the date of submission of the claim to all other institutions concerned Under this arrangement the migrant

need only submit his claim to the institution of his country of residence or to the institution with which he was last insured, which duly notifies the other institutions mentioned in the claim

The Governments were asked to state whether claims for benefit under the proposed international scheme should be submitted

*(i)* to only one of the institutions concerned (in particular to the institution of the country of residence) which would inform the others mentioned in the claim ,

or *(ii)* severally to each institution concerned

Fifteen replies were received, thirteen of which are in favour of inserting a clause allowing the migrant to submit his claim to a single institution only, and in particular to the institution of his country of residence These replies came from the following countries *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

No reservations are made in respect of any of these replies, but several of them propose various facilities to be allowed to the migrant The *Belgian* Government suggests that the insured person should be free to choose the institution to which he submits his claim, the institution of his place of residence being required to lend all necessary assistance The *Italian* Government specifies that claims affecting several institutions should be submitted only to that of the country of residence and, if the latter is not liable for benefit, to the institution with which the migrant was last insured The *Yugoslav* Government also considers that claims should be submitted to the institution of the country of residence and, if that country has not adopted the international scheme, to the institution with which the migrant was last insured

The *Netherlands* Government considers that a separate claim should be submitted to each institution liable for benefit, while the *French* Government recommends that the question should be regulated by special agreements between the Members

The general trend of these replies justifies the proposal that the beneficiaries of the international scheme need submit their claim for benefit to only one of the institutions with which they have been insured, as a rule the institution of the country in which they were last resident, which is responsible for informing the other institutions mentioned in the claim

## Rate of Exchange

(Question 22 Replies on pages 75 to 78)

In calculating the rate of the benefit for which it is liable, an insurance institution may have to take account of amounts

reckoned in the currency of another country In order to place these calculations on a sure basis, the method of conversion must be precisely stipulated.

In accordance with the decisions taken at the first discussion, the Governments were requested to state whether they considered that, when a sum is to be converted into the currency of another State Member participating in the international scheme, it should be converted according to the relation between the two currencies in the foreign exchange market of the capital of the Member in whose currency it is expressed, and if so, what should be the date adopted for ascertaining the exchange rate for the purpose of conversion

Out of the fifteen replies received, thirteen recommend that the method of conversion should be specified in the Draft Convention

The *French* Government wishes to relegate the question to separate agreements and the *Polish* Government does not consider it necessary to specify the method of conversion in the Draft Convention

The Governments of the following countries support the inclusion in the Draft Convention of a clause specifying the method of conversion *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Spain*, *Sweden*, *Yugoslavia*

As regards the date on which the exchange rate for the purpose of conversion should be ascertained, the following suggestions are made *Austria* first day of every calendar quarter, *Belgium* date of payment of benefit, *Brazil* · average rate over a specified period preceding the submission of the claim, *China* date of payment of benefit, *Italy* and *Netherlands* date of submission of claim, *Spain* first day of quarter immediately preceding the award of benefit; *Yugoslavia* rate current on the day, or rate current on the first day of the month or quarter, or a specified average rate, etc

A large majority of the Governments are thus in favour of fixing the method of conversion in the Draft Convention, agreeing that for this purpose the sum concerned should be converted according to the relation between the two currencies of the foreign exchange market of the capital of the Member in whose currency it is expressed The rate of conversion might be that current on the date on which the claim is submitted

### Provisional Benefit

(Question 23 Replies on pages 78 to 81)

The award of the benefits due to migrants may, however expeditious the treatment of the claim by the insurance

institutions, be delayed, and the beneficiary may thereby suffer hardship To protect migrants and their dependants from such privations, a number of bilateral treaties require an insurance institution to pay a provisional benefit, calculated on the basis of the insurance periods spent under the law of the institution concerned pending the final award

The Governments were consulted as to whether each institution with which the migrant has been successively insured should be required, pending final settlement, to pay provisional benefit at least equal to that payable in virtue only of insurance periods spent under its own law, and if so, whether the grant of such provisional benefit should be obligatory for each institution or merely optional

Before considering the replies received to this question, it may be pointed out that only a provisional benefit granted in fulfilment of a definite obligation would be capable of inclusion in the international Draft Convention An optional clause leaving the grant of provisional benefit to the discretion of the institution would afford no additional safeguard of the migrant's rights

Of the fifteen replies received, five approve both the principle of prescribing the compulsory payment of provisional benefit and the amount of such benefit as suggested in the Questionnaire These replies come from the Governments of the following countries *China*, *Hungary*, *Luxemburg*, *Spain*, *Yugoslavia*.

The replies of the *Austrian*, *Italian* and *Swedish* Governments are also in the affirmative, although they do not accept the solution proposed in the Questionnaire.

The *Austrian* Government considers that the grant of provisional benefit should be obligatory The benefit should be calculated by each institution on the basis only of the periods recognised under its own law ; in the case of fixed benefit components each institution should grant only a fraction corresponding to the number of institutions concerned, in order to avoid the payment of too high a provisional benefit

The *Italian* Government also states that the grant of provisional benefit should be compulsory and proposes the following method of calculation The institutions whose law provides for benefit components varying with the time spent in insurance should provisionally award these components reckoned on the basis of the periods spent under their own law, and those whose law provides only for fixed benefits independent of the length of insurance should pay provisional benefit at the rate of half the fixed benefits

The reply of the *Swedish* Government is affirmative as regards the principle concerned, considering it desirable that migrants should be granted provisional benefit at a reasonable rate.

The following Governments are opposed to the inclusion in the Draft Convention of a clause requiring the insurance institution to grant provisional benefit. *Belgium, Brazil, Bulgaria, Chile, France, Netherlands, Poland*

The Governments of *Belgium, Brazil, Chile, France* and the *Netherlands* are favourable to the principle of provisional benefit but consider that the grant of such benefit should be optional

The *Polish* Government is of the same opinion and does not consider it possible to ask Members to enter into a strict undertaking in regard to the grant of provisional benefit

The solution proposed in the Questionnaire, namely that each institution, pending final settlement, should grant provisional benefit at least equal to that payable in virtue only of insurance periods spent under its own law, is not approved by a majority of the replies, and strong opposition has been raised to the principle of the obligatory payment of provisional benefit Under these circumstances the Office considers it wiser to abandon the idea of including a clause to this effect in the Draft Convention, since a merely permissive clause would do nothing to strengthen the protection afforded to the rights of migrants, while a mandatory provision might prove an obstacle to the adoption of the Draft Convention

## Discharge of Liability by Transfer of Capital representing Rights in Course of Acquisition

(Question 24 Replies on pages 81 to 84)

The method proposed in the Questionnaire secures the maintenance in each country of rights in course of acquisition without any transfer of funds or settlement of accounts between the insurance institutions with which the migrant has been successively insured The replies received from Governments indicate that this method should be adopted as the basis of the proposed Draft Convention

In certain cases, however, insurance institutions may prefer to discharge their liability at the departure of the migrant by the payment of the capital representing his rights in course of acquisition, subject to the agreement of the insurance institution which will be responsible for the migrant in future and to the condition that the liability is not actually discharged until the capital representing the rights is transferred. This capital must be used to credit the migrant with rights in accordance with the tariff applied by the institution accepting the transfer

The Governments were asked to state whether they agreed that power should be given to the insurance institution to discharge its liability to the insured person and his depen-

dants by paying to the institution which is thenceforward responsible for him, subject to agreement between the two institutions, the capital representing his rights in course of acquisition at the date of his departure

With one exception, all the Governments accept the optional clause submitted for their opinion.

The replies of the following countries are unreservedly favourable *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *France*, *Hungary*, *Luxembourg*, *Netherlands*, *Spain*, *Sweden*

The other affirmative replies make certain reservations deserving of notice

The *Austrian* Government considers that a legal basis should be created for the proposed transfers by an agreement to that effect between the Members concerned, which would safeguard the insured person from being accorded less favourable conditions than under the international scheme for the maintenance in each country of rights in course of acquisition

The *Italian* Government approves the draft suggested in the Questionnaire, stating that in its opinion both the institutions concerned should be allowed to use their discretion in each particular case; that is to say, the institution which is thenceforward responsible for the migrant should be entitled to refuse the transfer of the capital representing his rights in course of acquisition even if a general agreement has been reached as to the methods of reckoning this capital

The *Yugoslav* Government agrees to the proposal, subject to the condition that the institution responsible for the migrant should take account of all periods spent with the previous institution and that agreements concluded between the various institutions in regard to the transfer of the capital representing rights in course of acquisition should be communicated to all States Members adopting the international scheme

The *Polish* Government is opposed to the suggested optional clause, which in its opinion does not provide an adequate safeguard for the rights of migrants, since it does not specify how the institution receiving the transfer is to take account of insurance periods spent with the previous institution. Moreover, it does not consider it advisable to subordinate the right to benefits of migrants to arrangements concluded between insurance institutions and having no legal value For this reason the Polish Government cannot consider the adoption of such a provision without first taking cognisance of any arguments that may be put forward in its favour by other Governments

The Governments have almost unanimously declared themselves in favour of giving insurance institutions the

power to discharge their liability towards the migrant and his dependants by paying the capital representing his rights in course of acquisition, subject to previous agreement with the institution thenceforward responsible for the migrant which must use the sum transferred to credit him with rights in accordance with its own tariff

Taking into account the suggestions and reservations made in the replies of Governments, it seems legitimate to propose the inclusion in the Draft Convention of an optional clause. It might be provided that, by agreement between the interested Members, power should be given to the institution or institutions of one Member to discharge their liability to the insured person and his dependants by paying to the institution thenceforward responsible for him the capital representing his rights in course of acquisition at the date of his departure, subject always to the consent of the latter institution and to its undertaking to use this capital to credit the migrant with rights in accordance with its own tariff

## Power of Members to agree to Depart from Rules suggested in Question 12

(Question 25 Replies on pages 84 to 86)

In the course of the first discussion at the 1934 Session it was pointed out by a Government delegate that, although the rules suggested under Question 12 provide the simplest solution, which in spite of its empirical character represents an acceptable approximation, other rules representing a solution midway between that of Question 12 and a solution based on purely actuarial principles might also receive consideration. This suggestion was adopted, and the Governments were requested to state whether they agreed that the Draft Convention should give power to Members, in agreement with one another, to depart from the rules laid down in Question 12 on the basis of the periods counted for the purpose of reckoning benefits under the law of each institution

Out of fifteen replies received, only one, that of the Government of *Chile*, is in the negative The affirmative replies come from the Governments of the following countries *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *China*, *France*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

More detailed provisions are demanded or reservations made by the *Austrian*, *Italian* and *Yugoslav* Governments.

The *Austrian* Government agrees to the proposal provided that the agreements in derogation of the rules indicated in Question 12 do not render difficult or impossible the application of the international scheme for other States adopting it. It is obvious that such agreements must in no way affect the position of Members who are not parties to them.

The *Italian* Government points out the empirical character of the rules laid down under Question 12, which are simple to apply but give approximate results only For this reason it is not desirable to prescribe their strict observance by means of an international Convention which would oblige Members to continue to apply empirical methods indefinitely It would be better to give Members the power suggested in this question and so leave the door open to future improvements

The *Yugoslav* Government also agrees to this suggestion, provided that the total benefit resulting from the new method of calculation is not less than that which would result from the application of the rules proposed under Question 12 This is necessary especially in cases where other countries are concerned, since it is clear that the obligations of the institutions of these countries which are not parties to the agreement allowing departure from the rules cannot be increased as a result of such agreement

The Governments which have replied to this question are almost unanimously in favour of giving Members power, in agreement with one another, to depart from the rules suggested in Question 12 for the purpose of reckoning benefits, without thereby affecting the rights and obligations of other Members

In accordance with the suggestion of the Yugoslav Government, it is proposed that no method of calculation should be accepted which does not result in the grant of benefit at least equivalent on the whole, *i e* in the average case, to that which would be payable according to the rules laid down in Question 12 Moreover, the derogatory agreement should not deprive migrants of the benefit of the protective clause, and for this purpose it would be necessary to guarantee in every case a total benefit at least equal to that which would result if only the insurance periods spent with a particular institution were taken into account

## III. — Maintenance of Acquired Rights

The maintenance of the right to a pension already granted supposes a case in which the event insured against has happened and the legal conditions of award (completion of qualifying period, maintenance of continuity of insurance, etc ) are fulfilled The rights of the insured person or of his survivors are already determined, whether they were acquired in virtue of contributions paid in a single country or of the totalisation of insurance periods spent successively in two or more countries.

If the whole insurance career has been spent in one country, arrangements for the maintenance of acquired

rights are necessary for insured persons of foreign nationality who, like their surviving dependants, will naturally tend to return to their country of origin on becoming disabled or reaching old age

In the case of rights acquired in two or more countries, a scheme for the maintenance of rights is also clearly necessary to enable the provisions for the maintenance of rights in course of acquisition to take effect In such cases the insured person is by definition resident abroad so far as at least one of the institutions is concerned, so that, if the provision made for the totalisation of insurance periods is not to remain a dead letter, acquired rights must be maintained during the pensioners' residence abroad.

### Residence of Beneficiaries

(Question 26 Replies on pages 86 to 88)

The rights acquired under schemes of invalidity, old-age and widows' and orphans' insurance should be maintained as long as their possessors fulfil the prescribed qualifying conditions, and pensions once awarded should continue to be paid so long as the consequences of the event giving rise to benefit persist A fair number of laws, however, terminate payment of certain benefits if the pensioners take up their residence in a country other than that in which the institution liable is established. The pensioner is then faced with the condition of residence, which makes the continued receipt of the pension dependent on residence in the country of the institution liable for it This condition may be compulsorily applicable, so that non-residence in the country of the insurance institution necessarily results in the loss of all rights, or its application may be optional, the insurance institution being free to use its discretion in regard to the regulations laid down by the law for the treatment of non-residents.

The Governments were asked to state their views on the question whether the international scheme should have the effect of abolishing the condition of residence and extending the privilege of the maintenance of rights to all persons in receipt of benefit wherever resident, or merely of abolishing the condition of residence in respect of beneficiaries domiciled in the territory of a Member adopting the scheme

The first solution suggested in the Questionnaire, i e that of the maintenance of acquired rights irrespective of the beneficiary's place of residence, is accepted by the Governments of the following seven countries. *Belgium*, *China*, *Hungary*, *Italy*, *Netherlands*, *Poland*, *Yugoslavia*

The *Italian* Government points out that the purpose of the suggested provision is to afford the greatest possible

measure of protection for the rights of insured persons, particularly of foreigners who have acquired their right to benefit in the country in which they have spent their occupational career and intend to return to their country of origin As, however, all States will not be in a position to adopt the scheme, it follows that some insured persons will lose their rights if maintenance is limited to residents in the territory of members who have done so.

The *Polish* Government, in accepting the more liberal solution, draws attention to the fact that the international Convention concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents (1925) applies to the nationals of all Members who have ratified the Convention irrespective of their place of residence

The *Yugoslav* Government is prepared to accept the wider solution subject to two conditions, namely that a possibility of supervision should be provided at the beneficiary's place of residence, and that the country of residence should not place any obstacles in the way of the payment of benefit due from its own institutions to beneficiaries resident abroad

The other eight replies received are opposed to the suggestion that the international scheme for the maintenance of acquired rights should apply irrespective of the beneficiary's country of residence

Of these replies, seven are in favour of the second solution suggested, that of the maintenance of acquired rights so long as the beneficiary is resident in the territory of any other Member adopting the scheme These replies come from the Governments of the following countries . *Austria*, *Brazil*, *Bulgaria*, *Chile*, *Luxemburg*, *Spain*, *Sweden*

The *Spanish* Government justifies its preference for this solution by the consideration that it would be difficult to organise administrative co-operation between countries which are not parties to the international scheme or do not possess even a rudimentary social insurance organisation.

The *Luxemburg* Government considers that the scheme should apply only to beneficiaries resident in the territory of a Member adopting the scheme, save in the case of persons who have been expelled from the territory or refused a residence permit

The *French* Government wishes to reserve the regulation of the residence condition for special agreements to be concluded between the Members, that is to say, the grant of benefit to claimants resident outside the country of the insurance institution liable for payment should in its opinion depend on the conclusion of separate treaties or agreements, and not on the ratification of the Draft Convention under consideration here

The foregoing review of the replies of Governments shows that there is no majority in favour of the maintenance of acquired rights irrespective of the beneficiary's place of residence The alternative solution proposed in the Questionnaire, i e that rights should be maintained only during the beneficiary's residence in the territory of another Member adopting the scheme, is, like the first, accepted by seven Governments returning explicit replies These considerations point to the necessity of adopting the suggestion restricting maintenance to beneficiaries resident in the territory of another Member adopting the scheme, which appears likely to receive fairly general support

It is reasonable to suppose that the Governments which are in favour of abolishing the condition of residence will not hesitate to give their support to a provision the consequence of which will be to make this condition inapplicable in the relations between Members adopting the international scheme The enforcement of a provision of this kind will represent a real advance, which will be extended with every new ratification of the Convention

It is true that under some few legislations those benefits at least which are derived from the contributions of insured persons and their employers continue to be paid irrespective of the beneficiary's country of residence Nevertheless, even countries whose law does not require the condition of residence might be unwilling to bind themselves by too strict an obligation for which they receive no return, especially in regard to beneficiaries domiciled in a country without any kind of compulsory insurance scheme

In support of the general abolition of the condition of residence, the example of the Convention concerning equality of treatment for national and foreign workers in respect of workmen's compensation for accidents has been cited, which provides for equality of treatment as between the nationals of all Members who have ratified the Convention irrespective of the place of residence The comparison is a reasonable one, at least in so far as the benefits derived from contributions of the insured persons and their employers are concerned Although the result of the consultation of Governments does not warrant the total abolition of the residence condition, it does at least justify the proposal that the nationality of the beneficiary shall be disregarded, as will be seen below.

### Nationality of Beneficiaries

(Question 27 Replies on pages 89 to 90)

The abolition of the residence condition formerly imposed on pensioners is only one factor in determining the beneficiaries of the international scheme for the maintenance of

rights. This condition may be abolished either in respect of all beneficiaries without regard to their nationality, or solely in respect of the nationals of Members adopting the scheme.

In accordance with the decisions taken at the first discussion, Governments were requested to state whether they considered that the international scheme for the maintenance of acquired rights should apply to all persons irrespective of nationality, or only to nationals of Members adopting the scheme, and in the latter case whether the beneficiaries should also include all persons without nationality

The application of the international scheme to all persons irrespective of nationality is recommended by the following nine Governments · *Belgium*, *China*, *Hungary*, *Italy*, *Poland*, *Spain*, *Sweden*, *Switzerland*, *Yugoslavia*

Two replies, those of the Governments of *Brazil* and *Luxemburg*, propose to restrict the application of the scheme to the nationals of Members adopting it and to persons without nationality.

Three replies *(Austria*, *Bulgaria*, and *Netherlands)* recommend that the scheme should apply only to nationals of Members adopting it, and should not include persons without nationality.

The *Chilean* Government also supports the application of the scheme only to the nationals of Members adopting it, without specifying the treatment to be granted to persons without nationality.

The *French* Government considers that the matter should be regulated by special agreements concluded between Members, as in respect of the previous question

Most of the replies are those in favour of applying the international scheme to all persons irrespective of nationality. We may therefore adopt this solution, which agrees with that indicated by the replies to Question 3 concerning the beneficiaries of the scheme for the maintenance of rights in course of acquisition, and corroborates the decisions taken by the Conference at its 1933 Session in connection with the adoption of the Draft Conventions concerning invalidity, old-age and widows' and orphans' insurance, none of which laid down any kind of restriction in regard to the nationality of the insured persons and their dependants, except in the case of subsidies, supplements and other pension components payable out of public funds

The combined effect of this rule and of that based on the replies of the Governments concerning the beneficiary's country of residence may now be compared with the solutions

adopted in bilateral treaties. These treaties adopt one of the following rules for the maintenance of acquired rights:

*(a)* Maintenance on behalf of nationals of the contracting countries, provided that they are resident in one or other of these countries,

*(b)* Maintenance on behalf of all pensioners irrespective of nationality, provided that they are resident in one or other of the contracting countries,

*(c)* Maintenance on behalf of the nationals of the contracting countries, irrespective of the country of residence

The replies of the Governments point to the intermediate solution under *(b)* above as that which should be applied in the international scheme. Workers who have been insured under an invalidity, old-age or widows' and orphans' insurance scheme in one of the States adopting the scheme, and the dependants of such workers, will continue to receive the pension acquired in virtue of their insurance under these schemes so long as they reside in the territory of any other Member participating in the scheme

### Rights to be covered by International Scheme

(Questions 28 and 29 Replies on pages 91 to 94)

The purpose of these questions was to ascertain the views of Governments as to the application of the principle of the maintenance of rights to the various benefit components The Governments were asked to state whether the proposed scheme should provide for the maintenance of the entirety of the benefits the right to which had been acquired, or only of benefits other than subsidies, supplements or allowances payable wholly or mainly out of public funds

Out of fifteen replies received, nine support the maintenance of acquired rights in their entirety. These replies come from the Governments of the following countries: *Austria*, *China*, *Hungary*, *Italy*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

The replies of the remaining countries, namely *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *France* and *Luxembourg*, propose that the scheme be restricted to the maintenance of the right to benefits other than subsidies, supplements or allowances payable wholly or mainly out of public funds, the maintenance of the latter benefit components being regulated by the national law of each Member and by special agreements between Members.

In appreciating the replies on this point, account must be taken of the conclusions drawn from the replies to

Question 27, namely the application of the international scheme to all persons irrespective of nationality. It must be determined whether the nine Governments which propose to include within the scheme the entirety of the benefits to which the right has been acquired are also in favour of extending the provisions for the maintenance of benefit components payable out of public funds to all persons irrespective of nationality, or only to the nationals of Members adopting the scheme.

The wider formula is accepted by the replies of six Governments *(China, Hungary, Poland, Spain, Sweden, Yugoslavia)*, while three Governments *(Austria, Italy, Netherlands)* propose that rights to benefit components payable out of public funds should be maintained only on behalf of the nationals of Members adopting the international scheme

The Government of *Luxemburg*, which declared itself opposed to the extension of the international scheme to benefit components payable out of public funds, nevertheless states that should the scheme be extended to these benefits also, its application should be restricted to the nationals of Members adopting it

We may now consider the results of the consultation on this point Most of the replies support the inclusion in the international scheme of subsidies, supplements and allowances payable out of public funds, but there is no majority in favour of extending this provision to all persons irrespective of nationality. In these circumstances, there is no alternative but to adopt the second solution suggested in the Questionnaire, restricting the maintenance of the benefits payable out of public funds solely to the nationals of Members adopting the scheme This course is adopted in the hope that some of the Governments which have declared themselves opposed to the principle of maintaining the benefits payable out of public funds may nevertheless see their way to supporting a proposal which, in conjunction with the residence condition applicable in respect of all benefits, would be restricted from the twofold standpoint of nationality and residence, only nationals of Members adopting the scheme who are resident in the territory of one of these Members being entitled to enjoy the privilege of the maintenance of benefits payable out of public funds.

## Restriction on Commutation

(Question 30 Replies on pages 94 to 97)

Certain laws provide that pension liability may be discharged by the payment of a lump sum if the claimant transfers his residence abroad Such a settlement by com-

mutation is prejudicial to the interests of the migrant whenever the payment he receives is smaller than the capital value of the pension. As the purpose of the proposed international scheme is to maintain acquired rights, it would seem that its adoption should automatically exclude the possibility of commuting the pension for a lump sum smaller than its capital value

Governments were requested to state whether they considered that the provisions of national law relating to the commutation of a pension for a lump sum in case of residence abroad should not apply to beneficiaries under the international scheme while resident in the territory of any other Member adopting the scheme

Of the fifteen replies received, twelve are unreservedly in the affirmative, holding that the provisions found in a fair number of national laws allowing the commutation of the pension for a lump sum smaller than the capital value of the pension in case of residence abroad should not apply to the beneficiaries of the international scheme while they are resident in the territory of any other Member adopting the scheme. These replies come from the following Governments. *Austria*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden* and *Yugoslavia* The reply of the *Netherlands* Government is in the affirmative as regards the nationals of one Member adopting the scheme resident in the territory of another The *Polish* Government, on the other hand, considers that the provisions concerned should not apply even to persons resident in a country which is not party to the international scheme, provided that the principle of the payment of pensions irrespective of the beneficiary's place of residence, and therefore even in cases of residence in a country which has not adopted the scheme, is admitted without restriction

Negative replies were received from the *Belgian* Government, which proposes that full freedom of decision be left to national laws, and from the *French* Government, which recommends that the question should be regulated by separate treaties between the Members

The reply of the *Brazilian* Government (see pp. 94-95) strongly supports the principle that the institution liable for benefit should have power to discharge its liability to a migrant resident abroad either by the payment of a lump sum representing the capital value of the pension or by regular payment of the pension, whatever its amount It may therefore be inferred that this Government too considers it unjust that the rights of pensioners who transfer their residence abroad should be injured by commutation of their pension for a lump sum smaller than its capital value

The replies to this question show a large majority in favour of limiting the application of the provisions of national law which restrict the rights of pensioners resident abroad by providing for the commutation of these rights for a lump sum lower than their capital value These provisions should not apply to beneficiaries under the international scheme while resident in the territory of any Member adopting the scheme.

### Non-contributory Pensions

(Question 31 Replies on pages 97 to 99)

In some countries non-contributory pension schemes take the place of insurance schemes in covering the risks of invalidity, old age and death The Governments were therefore asked whether the international scheme should provide for the maintenance of pensions awarded under a non-contributory scheme on behalf of persons entitled to such pensions and resident outside the country which is liable for them.

The Governments of the following countries replied in the affirmative *Austria*, *Belgium*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Sweden*, *Yugoslavia* The other replies are in the negative

Several of the Governments which approve the principle of the maintenance of rights to non-contributory pensions on behalf of beneficiaries resident abroad nevertheless make important reservations. The *Austrian* Government proposes that maintenance should be provided for only if the non-contributory pension scheme also covers the nationals of other Members adopting the international scheme, a suggestion which would safeguard the freedom of international laws to a considerable extent, since where they provided benefits for their own nationals only they would be free of all liability. The *Belgian* Government considers that maintenance should be allowed only if the pension is a right and not otherwise. The *Netherlands* Government considers that non-contributory pensions should continue to be paid abroad only in the case of the nationals of Members adopting the scheme, and if such pensions take the place of pensions awarded under an insurance scheme and can be regarded as equivalent to them.

As regards the condition of residence in relation to the maintenance of rights to non-contributory pensions, six Governments support the maintenance of rights irrespective of the place of residence *(Belgium, China, Hungary, Italy, Poland, Yugoslavia)* The *Yugoslav* Government stipulates that, as in the case of pensions acquired in virtue of contributions paid, rights should be maintained only subject to the possibility of supervision and provided that the country of residence places no obstacle in the way of the payment of benefits due from its own institutions to beneficiaries resident in the country of the institution which is liable.

Four Governments state that the maintenance rule should apply only to beneficiaries resident in the territory of any other Member adopting the scheme *(Austria, Luxemburg, Netherlands, Sweden)*. The Government of *Luxemburg* also observes on this point that an exception should be provided in the case of migrants expelled from the territory or refused a residence permit, whose rights should nevertheless be maintained

The maintenance of non-contributory pensions is supported without reservation, or without serious reservation, save as concerns residence, by seven Governments *(China, Hungary, Italy, Luxemburg, Poland, Sweden, Yugoslavia)*, while five Governments are opposed to the principle *(Brazil, Bulgaria, Chile, Denmark, Spain)*, and three others, although in favour of the principle, make various reservations which considerably weaken its force *(Austria, Belgium, Netherlands)* The *French* Government again advises that the regulation of the maintenance of non-contributory pensions should be left to special agreements between the Members

The result of the consultation of Governments does not appear to warrant the extension of the international scheme to cover non-contributory pension schemes, not only because of the restrictions with which many of the replies are hedged, but also because none of the countries in which non-contributory pensions take the place of compulsory insurance has declared itself in favour of this extension. The Government of *Denmark*, the only country in which a non-contributory old-age pension scheme really replaces compulsory social insurance and which has stated its attitude to this question, declares that it is unable to agree to the maintenance of these pensions in virtue of an international Convention

The proposal to extend the maintenance of rights to non-contributory pensions is also open to grave objections of principle Under all national laws the payment of non-contributory pensions is subject to conditions of need and of residence in the territory of the country liable [1] Residence in the country is here an absolutely essential condition for the continuance of the pension, whereas in the case of social insurance laws it is only a subsidiary condition, usually affecting part of the benefits only It seems impossible to set aside by means of an international scheme a provision that is so generally accepted and that is demanded by the nature of non-contributory pensions, which are granted only to persons in need and according to the extent of their need, with due regard to any other means they may possess

[1] Except in the case of the Australian law, which allows an exemption in case of temporary absence

The criterion of need is the decisive factor which turns non-contributory pension laws into social assistance laws and gives the non-contributory pension its conditional and precarious character The fact that it is constantly necessary to verify the continued existence of the beneficiary's need would in itself be enough to make the maintenance of non-contributory pensions on behalf of beneficiaries resident abroad a much more complicated and difficult matter than the maintenance of insurance benefits proper.

Under these circumstances the extension of the international scheme for the maintenance of acquired rights to cover non-contributory pensions cannot be proposed with any reasonable prospect of success

## Medium of Payment

(Question 32 Replies on pages 99 to 101)

The fact that the pensioner resides abroad does not modify the obligations of the institution liable for the pension in respect of the law under which payment is to be effected. Each institution grants benefit in the ordinary way within the limits of its territory and in the currency of its country Subject to any arrangements which may be made to facilitate payment abroad, the institution is not obliged to effect payment otherwise than in its national currency.

On this subject the Governments were consulted only with a view to elucidating a point of law and confirming that the fact that a pensioner is resident abroad does not affect the obligations of the institution liable for the payment of his pension Obviously, however, if this institution has entrusted the institution of the pensioner's place of residence with the payment of pension instalments, the settlement must be effected in accordance with agreed rules

No objections are raised to the inclusion in the Draft Convention of a provision stipulating that the institution liable for benefit should have power to discharge its liability in the currency of its own country, except by the reply of the *French* Government, which states that the conditions for the discharge of the liability of insurance institutions should be laid down by special agreements between the Members concerned

The *Polish* and *Yugoslav* Governments consider that a provision to this effect is practically superfluous, since the power of the institution liable to discharge its liability to beneficiaries in the currency of its own country is hardly open to question

Most of the Governments, however, consider that the Draft Convention should simply provide that the institution liable should have power to discharge in the currency of its own

country its liability to persons entitled to benefit This is stated by the replies of the following countries: *Austria, Belgium, Bulgaria, China, Hungary, Italy, Luxemburg, Netherlands, Spain, Sweden*

The result of the consultation on this point will be taken into account in drafting the scheme

## Commutation of Small Pensions

(Question 33 Replies on pages 101 to 105)

The payment of small pensions abroad entails expenses which are quite out of proportion to the size of the benefits concerned

The Governments were therefore asked to state whether the institution liable for benefit should be given power to commute any pension, the monthly rate of which does not reach a certain minimum, for a lump sum to be calculated according to the provisions applicable to the institution.

Only two Governments *(Austria, Hungary)* are opposed to this suggestion, thirteen considering that power should be given to the institution to commute small pensions *(Belgium, Brazil, Bulgaria, Chile, China, France, Italy, Luxemburg, Netherlands, Poland, Spain, Sweden, Yugoslavia)* The *Italian* Government, however, proposes that where the national law of the institution contains no provision to this effect, a minimum might be fixed varying with the amount of the average daily wage The body responsible for assisting Members in the application of the scheme might usefully propose a minimum on these lines, varying according to whether the pensioner is resident in a country adopting the scheme or not.

The *Polish* Government, while agreeing that the fixing of the suggested minimum might be left to national law, proposes a fixed sum in gold currency The *Yugoslav* Government similarly proposes a uniform minimum of three or five gold francs The *Spanish* Government considers that the fixing of the minimum should be regulated by national law, and the *Chilean* Government suggests that it might be fixed in proportion to wages

Thirteen Governments out of the fifteen having declared themselves in favour of leaving to national legislation the decision as to whether insurance institutions should have the option of commuting pensions below a specified minimum, and eight out of these thirteen considering that the fixing of this minimum should also be left to national legislation, these views must be taken into account in framing the Draft Convention

The results of the consultation of Governments are quite clear as regards the advisability of giving the institutions

power under national laws to allow the commutation of small pensions not exceeding an amount to be fixed by these laws It remains, therefore, to consider the conditions under which commutation is to be effected When these conditions are fixed by the law of the institution liable for benefit, the relevant provisions are also applicable to the determination of the lump sum to be paid to the beneficiaries under the international scheme Failing such provisions of national law, pensions, the monthly amount of which does not exceed a specified minimum, might be commuted by payment of their capital value

The complication and expense attendant on the payment of small pensions to persons resident abroad are naturally greater where the institution has itself to pay a small pension by regular monthly instalments to a beneficiary resident outside its territory than where it is liable for a partial pension which may be paid on its behalf by the institution of the country of residence or by the institution with which the pensioner was last insured, the institution liable reimbursing at agreed intervals that undertaking payment

Two solutions are possible to meet these circumstances The commutation of partial pensions may be forbidden whatever their amount, this being suggested by the *Austrian* and *Yugoslav* Governments, or a special minimum may be fixed for cases where partial pensions are due from the institutions of two or more Members participating in the international scheme

A third possibility is that of forbidding the commutation of all pensions, however small, due from a single institution and allowing the institution liable for a partial pension to discharge its liability by paying the capital value of the pension to an institution in the pensioner's country of residence or to that with which he was last insured. This is the system proposed by the *Hungarian* Government.

Nearly all the Governments which replied to the Questionnaire declare themselves in favour of allowing the commutation of partial pensions, but only where the monthly rate of such pensions does not exceed a specified minimum This view is expressed in the replies of the following Governments. *Belgium*, *Brazil*, *Bulgaria*, *China*, *France*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*

Six Governments, namely those of *Belgium*, *Bulgaria*, *China*, *France*, *Luxemburg* and *Sweden*, see no necessity to fix a special minimum for commutation when partial pensions are due from two or more institutions

Three other Governments, however, propose that a special minimum should be fixed, either by separate agreements between members *(Spain)*, or in a gold currency *(Poland)*, or as a percentage of the total pension *(Italy)* The *Italian*

and *Polish* Governments also suggest that the institution liable should have the option of transferring the capital representing a pension below the specified minimum to another institution which undertakes payment of the pension

The *Netherlands* Government points out that the power to commute small pensions would carry with it the risk that several partial pensions, small in themselves, might be commuted by the payment of lump sums which would also be small In cases of this kind it would be preferable to pay the pensions every three or six months This Government does not suggest any particular minimum, however, considering that this should be regulated by national legislation

The replies of the majority of the Government indicate that the Draft Convention need not fix a special minimum for the commutation of partial pensions due from the institutions of two or more Members participating in the scheme

### Provision for Reduction or Suspension

(Question 34 Replies on pages 105 to 107)

In principle, the benefits payable in virtue of compulsory insurance are awarded as of strict legal right Numerous laws, however, restrict the application of this principle to the extent that the payment of benefit may be suspended in whole or in part so long as the pensioner is in receipt of another benefit payable in virtue of any law concerning compulsory social insurance or workmen's compensation for accidents or occupational diseases These provisions, which prevent or restrict the possibility of concurrent benefits, are defended on the ground that it is not the function of social insurance to provide benefits of a total amount greater than the loss suffered by the insured person or his dependants

Some laws also suspend the payment of the pension so long as the person concerned is still in insurable employment. This provision may help to relieve congestion on the labour market, at least if the pension is high enough to support the beneficiary, since it acts as an inducement for him to give up his work as soon as he reaches the pensionable age in order to be entitled to draw his pension On the other hand, the fact that the pension is payable exclusively to insured persons who have given up their work voluntarily or otherwise, may also to some extent facilitate the covering of general risks by reducing the number of persons in receipt of benefits

The Questionnaire asked the opinion of Governments as to whether provisions of this kind in the national law of a Member should also apply to beneficiaries under the international scheme even in respect of benefit paid by an institution, and of the exercise of employment in the territory, of any other Member participating in the scheme.

All the Governments which gave their views on this point replied in the affirmative, namely those of the following countries *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

The *Hungarian* and *Netherlands* Governments observe that the power to apply provisions of national law for the reduction or suspension of benefit should not be extended or interpreted in such a way as to hinder the application of the international scheme on the pretext of prohibiting concurrent rights These two Governments also consider that the power to apply these provisions should extend to all insurance benefits, whether or not they are provided by an institution established on the territory of a Member participating in the scheme The same opinion is expressed by the Government of *Yugoslavia*, which proposes that the rule should cover benefits acquired and employment exercised in countries which have not adopted the international scheme but are bound by other international agreements, and even in countries which are bound by no international agreement, provided that conclusive proof can be obtained of the existence of such benefits and employment.

The result of the consultation on this point is clear The Draft Convention should provide for the possibility of applying the reduction and suspension provisions of the national law of a Member, even in respect of benefit payable or employment held in the territory of any other Member participating in the scheme. The international scheme might perhaps go even farther and allow the application of these provisions even in respect of benefits payable and employment held in countries which have not adopted the international scheme

The power thus granted to Members to apply the provisions of their own law in regard to the reduction or suspension of benefit would place no obstacle in the way of the observance of the rules laid down under the international scheme these provisions must in no case affect rights arising under this scheme

## IV. — Mutual Assistance in Administration

### Principle of Mutual Assistance

(Question 35 Replies on pages 107 to 108)

The application of the proposed international scheme for the maintenance of migrants' pension rights requires the co-operation of the insurance institutions and administrative and judicial authorities responsible for applying the national

social insurance laws of the Members participating in the scheme. The organisation of mutual assistance is essential for the efficient operation of the scheme.

The principle of mutual assistance is laid down in all the bilateral treaties ; it entails on the administrative authorities and insurance institutions of the contracting countries the duty of affording one another assistance, just as they would in applying their own insurance laws. This principle concerns the insurance institutions on the one hand and the administrative and judicial authorities on the other, whether such authorities are of a specialised or of a general character, but in the latter case only in so far as they participate in the administration of insurance legislation

All the explicit replies received to this question, fifteen in all, are in the affirmative, and the principle of mutual assistance may therefore be adopted without hesitation. The authorities and social insurance institutions of Members adopting the international scheme should afford one another assistance to the same extent as they do in applying their own social insurance legislation.

## Investigations

(Question 36 Replies on pages 108 to 110)

The scope of mutual assistance and the methods by which it is given vary from country to country and from law to law, and it is neither possible nor expedient to catalogue all the administrative functions which the insurance institutions may be called upon to perform by way of mutual assistance Nevertheless some of these functions must inevitably come within the scope of mutual assistance, in particular investigations and medical examinations, which are necessary to determine whether the beneficiaries continue to fulfil the conditions entitling them to benefit

On this point again all the replies received were in the affirmative, coming from the following countries *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *France*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

No reservations are made except by the *Netherlands Government*, which notes that each insurance institution should verify and decide for itself whether the claimant fulfils the qualifying conditions for benefit, and should also reserve the power to conduct an examination on the spot

The results of the consultation authorise the inclusion in mutual assistance of investigations and medical examinations necessary to determine whether persons in receipt of benefits continue to fulfil the qualifying conditions

## Expenses of Mutual Assistance

(Question 37 Replies on pages 110 to 113)

Mutual assistance may be granted free of charge or subject to repayment of the expenses involved

The Governments were requested to state whether they considered that it would be desirable to lay down rules for the repayment of the expenses of mutual assistance in the Draft Convention, and if so, how the sum to be repaid should be determined

There is considerable division of opinion among the replies as to the necessity or expediency of regulating the repayment of the expenses of mutual assistance in the Draft Convention Out of 15 replies received, 8 are in the affirmative and 7 in the negative

The Governments of the following countries are opposed to regulating the repayment of the expenses of mutual assistance under the international scheme. *Belgium*, *Chile*, *France*, *Hungary*, *Luxemburg*, *Netherlands*, *Sweden*

The Governments of *Chile* and *Luxemburg* consider that mutual assistance should be provided free of charge, since, as such assistance is reciprocal, the expenses involved normally cancel each other out The *Hungarian* Government holds the same view, recommending the repayment only of the cost of medical examinations requiring the claimant's admission to hospital or the use of expensive apparatus

The *Belgian*, *French* and *Netherlands* Governments recommend that the regulation of this matter should be left to special agreements between the Members or insurance institutions concerned

The other replies are in the affirmative, supporting the proposal that rules for the repayment of the expenses of mutual assistance should be laid down in the Draft Convention

As the Governments are divided in their opinion, the Office suggests the adoption of a formula safeguarding the individual freedom of action of Members The expenses of mutual assistance should be subject to repayment unless otherwise agreed between the Members

As regards the sum to be repaid, eight Governments, those of *Austria*, *Brazil*, *Bulgaria*, *China*, *Italy*, *Poland*, *Spain* and *Yugoslavia*, agree that it should be determined according to the scale of the authority or insurance institution which affords assistance, and that in the absence of any such scale the actual expenditure incurred should be repaid The *Yugoslav* Government also adds that the institution liable should be entitled to repay the actual expenditure incurred if the scale of the institution rendering the assistance is substantially higher than this expenditure.

Only seven replies recommended that the date at which repayment is to be effected should be fixed in the Draft Convention, and these replies do not agree among themselves. The *Austrian* Government suggests that the sums due should be repaid within a month of their notification to the institution liable, and the *Chinese* Government that a settlement should be effected at the end of each calendar month. The *Spanish*, *Italian* and *Polish* Governments recommend that accounts should be settled quarterly, and the *Yugoslav* Government monthly or quarterly Finally, the *Hungarian* Government proposes that the repayment of expenses should take place annually on 31 March of the following year.

The *Austrian* and *Yugoslav* Governments also suggest that, in the event of delay in repayment, interest should be chargeable on the amount due The *Italian* Government proposes that, where several institutions are concerned, the expenses of mutual assistance should be shared in the proportion of the share of benefit for which each is liable, but if the investigation or examination is conducted on behalf of one institution alone, the latter alone should be liable for the whole expenditure incurred

As the majority of the replies are not in favour of fixing the date of repayment, the Office does not propose the inclusion of a clause to this effect, it being understood that, failing agreement to the contrary, repayment may be claimed as soon as the investigation requested has been carried out and the notification of the amount has been received by the institution liable

## Exemption from Taxation

(Question 38 Replies on pages 113 to 114)

This question referred to the privilege of exemption from taxation granted in respect of documents submitted to the authorities or insurance institutions of one Member, asking Governments whether they were in favour of providing that this privilege should be extended to corresponding documents submitted in connection with the administration of the international scheme to the authorities and institutions of any other Member participating in the scheme.

Out of the fifteen replies received, twelve are definitely affirmative, coming from the Governments of the following countries: *Austria*, *Belgium*, *Brazil*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*.

The *French* Government, while recognising the desirability of exempting the documents to be submitted to insurance institutions from taxation, considers that the extent of such exemption and the conditions attaching to it should be settled by special agreements.

The reply of the *Bulgarian* Government is in the negative, and so is that of the *Netherlands* Government, which nevertheless points out that under its own legislation documents issued for the purposes of social insurance laws are exempted from stamp duty.

Taking these views into consideration, the Office proposes that exemption from taxation provided in respect of documents submitted to the authorities or insurance institutions of one Member should be extended to the corresponding documents submitted in connection with the administration of the international scheme to the authorities and institutions of any other Member participating in the scheme.

## Administration and Payment of Total Benefits by Institution of Place of Residence of Beneficiary

(Question 39 Replies on pages 114 to 117)

A special form of mutual assistance is that under which the institution of the beneficiary's place of residence is empowered to administer all the benefit due. The Governments were asked to state whether they considered that the institution liable for benefit should be empowered, where the beneficiary resides in the territory of another Member participating in the international scheme, to agree with the institution competent for the place of residence of the beneficiary, that the latter institution should undertake the payment of the benefit subject to repayment by the former.

All the replies received were in the affirmative, it being understood that this provision is merely an optional one, the application of which is conditional on the conclusion of preliminary agreements between the institutions concerned.

The *Italian* Government, however, considers that the entrusting of the administration of benefits to the institution of the beneficiary's place of residence should constitute a general rule rather than an optional power in all cases, whether the beneficiary is entitled to benefit from one or several institutions The same Government also suggests that rules should be laid down to regulate this form of administrative assistance (see pp 115-116) Each institution should calculate its share of benefit in its own currency, while the institution of the place of residence should pay the whole of the benefit in the currency of its own country In order to avoid continual fluctuations in the amount of the partial pensions for which the other institutions are liable, the institution of the place of residence should calculate the whole of the amount of benefit due in its own currency at the beginning of every half-yearly period, this amount then remaining constant for the next six months. The institution or

institutions liable would then convert into their own currency the payments made on their behalf at the rate of exchange current on the date of repayment, which should in principle be every three months. The institution of the place of residence should also be empowered to ask the institution liable for benefit for payments on account when the disbursements to be made exceed its own available resources

The *Luxemburg* Government also considers that the institution of the beneficiary's place of residence should administer the whole of the benefit due as a general rule, while the *Netherlands* Government on the contrary considers that this power should be entirely optional, the insurance institution being free to lay down its own rules concerning the conditions attaching to such assistance

The *Yugoslav* Government supports the optional formula, but adds that where several partial benefits are due to the same beneficiary by several institutions their payment by the institution of the place of residence should be compulsory.

The Office does not consider that the general sense of the replies received on this point would justify the giving of compulsory force to the optional provision suggested in the Questionnaire Where the beneficiary resides in the territory of another Member participating in the international scheme, the institution liable for benefit should merely be empowered to entrust the institution competent for the place of residence of the beneficiary with the payment of benefit, subject to repayment by the former institution It is understood that any arrangements made between the institutions of the different countries should be subject to the approval of the competent central authorities

## Obligation to declare Insurance Periods

(Question 40 Replies on pages 117 to 119)

It was decided at the first discussion that the Governments should be consulted as to whether an insured person entering the insurance of a Member participating in the international scheme should be required to declare within a certain time limit, reckoned from the date of such entry, the periods spent by him in the insurance of any other Member participating in the scheme.

Many favourable replies were received to this question, but the negative replies and reservations were also numerous.

The *French* Government wishes to leave the decision to special agreements between Members

The *Italian* Government points out that, if migrants were required to declare the insurance periods spent by them in other countries, it would also be necessary to provide a sanction by stipulating that any periods not declared should

not be taken into account. Such a sanction, however, would be wholly unjustifiable, since it would penalise, not only the migrant, but also the insurance institution with which he was last insured, while the declaration of insurance periods is unnecessary once it is prescribed that the claim for benefits must be made through the last institution.

The Governments of *Luxemburg* and *Yugoslavia* also hold that the obligation contemplated should not entail sanctions depriving migrants of their rights

The *Netherlands* Government notes that Members are in any case free to demand that insurance periods shall be declared and that there is no object in introducing a compulsory international rule. The *Swedish* Government is of the same opinion

It is of course obvious that the Members participating in the international scheme will in any case be free to require migrants to submit all the information necessary for the full application of the scheme As, moreover, the proposal merely to mention this power in the Draft Convention is by no means accepted without demur by all the Governments which replied to the question, the Office considers it advisable to omit any reference to this subject

## V — Operation of International Scheme

### Date of Coming into Force

(Question 41 Replies on pages 119 to 121)

The date on which the Draft Convention establishing the international scheme for the maintenance of rights would come into force would be determined according to the usual rules It would come into force twelve months after the ratification of two Members had been registered, and thereafter would become operative for each Member twelve months after registration of its ratification

All the Governments which replied to this question accept these rules, but the *Austrian* and *Hungarian* Governments suggest that the period specified should be reduced from twelve to six months.

The Office considers that the period of twelve months which was agreed to at the first discussion should be maintained It will not be too long, the Members which have ratified the Convention being required to use it to make all necessary preparations for the effective application of the scheme It is understood that the only condition for the coming into force of the Convention in respect of each Member is the registration of its ratification and the expiry of the twelve months' period

## Body to assist Members in applying Scheme

(Question 42 Replies on pages 121 to 124)

The application of the international scheme will give rise to various difficulties on points of detail which cannot be regulated by the Convention itself. In order to enable the scheme to produce its full effects, certain administrative measures must be adopted jointly by the Members participating in it. The insurance laws of these Members will, from time to time, undergo amendment which may affect the application of the Convention and call for adjustments in the concerted arrangements of the insurance institutions concerned.

In accordance with the decisions taken at the first discussion, the Governments were asked to state whether they were in favour of establishing a special body for the purpose of assisting Members adopting the international scheme in the application thereof, it being understood that this special body would trespass neither on the duties of the Office and the Committee on Article 408 nor on the competence of the Permanent Court of International Justice with respect to the interpretation of international conventions.

The great majority of the replies agreed that it would be useful to establish a special body to assist Members in the application of the scheme These replies came from the following countries: *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Chile*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*.

The replies of the *French* and *Netherlands* Governments are in the negative The *French* Government confines itself to remarking that if this is to be an independent body its creation cannot be contemplated until some arrangement has been made as to ways and means, while if it is to be a body attached to the International Labour Office the latter should take the necessary steps in this respect, while the *Netherlands* Government sees no object in setting up a body of this kind, since the interpretation of conventions is the province of the Permanent Court of International Justice and supervision of their application is ensured by the Committee on Article 408.

The favourable replies also define the duties to be entrusted to the proposed international body In the opinion of the *Italian* Government it would have to assist in settling many questions of a particularly technical kind that will arise in connection with the application of the proposed Convention. The *Polish* Government considers that failing the existence of such a body the application of the Convention would meet with serious difficulties, particularly in view of its somewhat concise wording and the frequent changes in insurance legislation The *Yugoslav* Government considers that the

proposed body should intervene in an advisory capacity at the request of the parties with a view to remedying any omissions in the Convention and adapting its provisions to concrete cases

The same Governments give various examples to illustrate the kind of services that the proposed body might render. The *Italian* Government suggests that it might be entrusted with the fixing of the minimum below which pensions might be commuted (Question 33), and the *Polish* Government that it should be made responsible for adapting the rules under Question 12 for application to individual cases and for deciding whether the provisions of bilateral treaties are equivalent to those under the international scheme (Question 50). The *Yugoslav* Government proposes that it should be responsible for assessing the comparative value of the protection provided by different insurance schemes (Question 7), determining the benefit components to be subject to reduction (Question 13), allotting the expenses incurred on medical treatment (Question 20), deciding as to the application of the provisions for reduction or suspension (Question 34), etc

Most of the favourable replies recommend that the body to assist Members in applying the scheme should be set up in connection with the International Labour Office in the form of a committee consisting of one or more representatives of Members who have ratified the Convention *(Austria, Belgium, Brazil, Bulgaria, Chile)* The *Spanish* Government states that the body should consist of social insurance experts and might also include workers' and employers' representatives who are specialists in the matter The Government of *Luxemburg* is of the opinion that it should consist of legal, medical, and actuarial experts in sufficient numbers to form several sections if necessary. The *Polish* Government proposes that the body should be called the " Advisory Committee on Questions Concerning the Maintenance of Rights under Invalidity, Old-Age, and Widows' and Orphans' Insurance " and should be composed of a chairman and two vice-chairmen appointed by the Governing Body of the International Labour Office and one member and one substitute member for each State participating in the scheme The plenary sessions of this committee would be entrusted with the preparation of general recommendations concerning the methods of applying the Convention, while the settlement of difficulties or problems arising between particular Members would be entrusted to special sub-committees consisting of the chairman of the committee and one delegate for each Member concerned

In consideration of these suggestions it is proposed that a commission should be set up in connection with the International Labour Office to assist Members in applying the international scheme consisting of one delegate for each

Member which has ratified the Convention and three persons appointed respectively by the Government, Employers' and Workers' groups of the Governing Body of the Office The commission would draw up its own standing orders, its duties would be to recommend, at the request of one or more Members, rules for the application of the Convention in accordance with its principles and purpose.

### Pensions not Awarded or else Suspended by Reason of Residence Abroad

(Question 43 · Replies on pages 124 to 126)

The provisions relating to the maintenance of acquired rights have as their principal object the abolition of the restrictions imposed upon the receipt of pensions during residence abroad. In the absence of a provision dealing expressly with pensions which have not been awarded or had been suspended before the coming into force of the Convention solely on the ground of residence abroad, the Convention would apply only to events which happen subsequently to its coming into force

Since the residence condition ought not to apply to beneficiaries under the Convention, it would be fair to stipulate on behalf of persons who fulfil in other respects the conditions laid down in the Convention that pensions in respect of which no award has been made or which have been suspended merely because of residence abroad should be granted or resumed.

The Governments were asked to state whether they considered that pensions in respect of which no award has been made or which have been suspended before the coming into force of the international scheme because the persons concerned reside abroad should be awarded or resumed as from the coming into force of the scheme, it being understood that no payments should be made on account of pension instalments for the period preceding the date when it came into force

Out of fifteen replies received ten are in the affirmative and five in the negative

Negative replies come from the Governments of *Brazil*, *Bulgaria*, *Chile*, and *Sweden*, and also from the *French* Government, which wishes the point to be settled by special agreements between the Members.

Affirmative replies were received from the Governments of all the other countries, namely *Austria*, *Belgium*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Yugoslavia*

The *Netherlands* Government considers that an international scheme would give little satisfaction if pensions which had not been awarded or had been suspended before it came into force owing solely to the claimant's residence

abroad were not to be paid after the adoption of the scheme. Payment of such pensions should, however, take place only in the case of nationals of a Member which had adopted the scheme

The *Yugoslav* Government, while replying in the affirmative, makes a distinction based on the date when the right to the pension concerned was or would have been acquired. All pensions should be awarded or resumed automatically unless they should have been awarded, or were suspended, more than ten years before the Convention came into force, when resumption or award should take place only when claimed by the beneficiary within a specified time limit, say two years after the Convention comes into force.

The result of the consultation of Governments justifies the inclusion in the Draft Convention of an Article stipulating that pensions in respect of which no award had been made or which had been suspended before the coming into force of the international scheme because the persons concerned reside abroad should be awarded or resumed as from the coming into force of the scheme

## Recovery of Rights in Respect of Periods Antecedent to the Coming into Force of the Scheme

(Question 44 Replies on pages 126 to 127)

An international scheme for the maintenance of rights in course of acquisition which dealt only with rights arising in respect of periods subsequent to its coming into force would be of little value to the present generation of insured persons For this reason, all the bilateral treaties which have been concluded recently require, or at least enable, rights in respect of periods antecedent to the coming into force of the treaty to be restored. Insured persons who before that date had passed out of insurance in one of the contracting countries into the insurance of the other and have for that reason lost all credit for the insurance periods spent in the first country are reinstated in their rights in respect of those periods as from the date on which the treaty comes into force

It was decided at the 1934 Session during the first discussion that the proposed international scheme should be retroactive in respect of the rights based on periods antecedent to its coming into force At the same time it was stipulated that the retroactive effect should be operative only as regards the rights in respect of these periods, no payment of arrears being due on their account.

The Governments were asked to state whether, for the purpose of maintaining rights in the course of acquisition

under the international scheme, account should be taken of rights in respect of periods antecedent to the coming into force of the scheme

Here again the affirmative replies are in the majority, coming from the following countries. *Austria*, *Belgium*, *Brazil*, *Chile*, *China*, *Hungary*, *Italy*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia*

Negative replies were received from *Bulgaria*, *France*, and *Luxemburg*. The *French* Government wishes the decision as to the recovery of rights in respect of periods antecedent to the coming into force of the Convention to be left to special agreements between the Members, while the *Luxemburg* Government justifies its rejection of the proposal on the ground of the administrative and financial difficulties likely to be involved by any attempt to revive under the international scheme rights which had lapsed under national law.

In accordance with the majority view and in consideration of the fact that all the bilateral treaties without exception count insurance periods antecedent to their coming into force for the purpose of maintaining rights, the Office proposes that the same rule should be laid down in the international scheme.

## Review of Previous Awards and Review of Rights in Pursuance of the Scheme

(Question 45. Replies on pages 128 to 131)

It has been seen that the replies of the Governments justify the proposal that, for the purpose of applying the international scheme, account should be taken of rights in respect of periods antecedent to the coming into force of the scheme. This being so, it becomes necessary to lay down the procedure for the review of awards already made, for the recovery of rights and for the making of awards in pursuance of the scheme. This question was brought to the attention of the Governments, it being provided that review should not involve the payment of any arrears or repayment of benefit for the period antecedent to the coming into force of the scheme.

Out of fifteen replies received, nine are in favour of the review of previous awards and rights, and six are opposed to it.

The negative replies come from the Governments of *Brazil*, *Bulgaria*, *Chile* and *Sweden*. The *French* Government is not expressly opposed to the principle of review but considers that the matter should be settled by special agreements between the Members concerned. The *Luxemburg* Government considers that the review of previous awards and of rights, for the purpose of reviving them or making an award in pursuance

of the scheme, might give rise to administrative and financial difficulties, but it nevertheless suggests the conditions which might govern such review

The other replies advocate review, provided that it does not involve the payment of any arrears or repayment of benefits for the period antecedent to the coming into force of the scheme This view is held by the Governments of the following countries . *Austria, Belgium, China, Hungary, Italy, Netherlands, Poland, Spain, Yugoslavia.*

As the replies favourable to the principle of review are in the majority, it becomes necessary to consider under what conditions such review must or may take place

Only ten replies are available on this point, three of which proposed that review should take place as a matter of course *(Austria, Italy, Poland)*, while the other seven would allow review only upon formal application by the claimant.

If, as the majority of the replies suggest, the review of awards is to take place only at the claimant's request, it still remains to decide the conditions under which the claimant may apply for review

On this point, the Governments were asked to state whether they considered that review should not take place where the claim has been settled by a lump-sum payment, and where the person concerned was awarded a pension before the international scheme came into force in respect of the institutions of two or more Members participating in the scheme.

Eight replies *(Austria, Belgium, Hungary, Italy, Luxemburg, Netherlands, Poland, Spain)* state that review should not take place when the claim has been settled by a lump-sum payment, and the same number of replies *(Austria, Belgium, China, Hungary, Italy, Luxemburg, Spain, Yugoslavia)* are also in favour of prohibiting review when a pension has been awarded by the institutions of two or more Members.

In considering the results of the consultation, it must be borne in mind that the suggestion that review should not take place in the second case mentioned (where the pension was awarded by the institutions of two or more Members) was made on the hypothesis that review takes place as a matter of course Once it has been agreed, however, that review should take place solely at the request of the claimant, only cases in which the claim has been settled by a lump-sum payment need be excluded.

It is therefore proposed that the international scheme should lay down the obligation to review awards antecedent to the coming into force of the scheme, and rights for the purpose of reviving them or making an award in pursuance of the scheme, upon application by the claimant, unless his claim has already been settled by a lump-sum payment

## Undertaking by Members not having Established Compulsory Old-Age Insurance

(Question 46 Replies on pages 131 to 133)

It is possible for the international scheme for the maintenance of rights to operate although the national laws of the Members participating in it are not necessarily equivalent. Nevertheless, in order to secure the proper working of the arrangements, each of the Members adopting the scheme must possess a compulsory insurance scheme covering, if not the three risks of invalidity, old age and death, at least that of old age or of invalidity as well.

In accordance with the decisions taken at the first discussion, the Governments were asked to state whether in their opinion Members who, at the date of registration of their ratification, have not yet set up a scheme of compulsory insurance covering at least the risk of old age, should by ratification bind themselves to introduce, within the twelve months following the registration of their ratification, a scheme of compulsory insurance covering the risk of old age or the risks of old-age and invalidity

Fourteen replies were received concerning the undertaking to be entered into by Members who have not yet instituted a compulsory insurance scheme when ratifying the Convention Seven of the Governments consider that such Members should bind themselves to introduce a compulsory insurance scheme covering the risks both of old age and of invalidity, while the other seven regard it as sufficient to require the covering of one of these risks, preferably that of old age

The introduction of invalidity insurance and old-age insurance together is advocated by the Governments of the following countries . *Brazil*, *Bulgaria*, *Chile*, *Hungary*, *Luxemburg*, *Netherlands*, *Yugoslavia* The *Brazilian* and *Bulgarian* Governments agree in recommending an extension of the time limit for the introduction of such schemes to three years The *Hungarian* Government regards it as desirable that the insurance schemes of Members adopting the international scheme should also cover the risk of death, and the *Luxemburg* Government considers that this should be compulsory, while the *Yugoslav* Government is opposed to extending the obligation to the risk of death. The *Netherlands* Government considers that every Member adopting the international scheme should set up a compulsory old-age and invalidity insurance scheme of its own before the international scheme comes into operation for it.

The Governments of the following countries consider that Members should be required to bind themselves to

introduce an old-age insurance scheme only . *Austria, Belgium, China, Italy, Poland, Spain, Sweden* The *Austrian* and *Polish* Governments think that Members should be given the option of introducing a compulsory scheme either for invalidity insurance or for old-age insurance within the twelve months following registration of their ratification, the *Austrian* Government adding that the age for the award of the pension should be not later than 65 years.

In view of the fact that each of the proposals made in the Questionnaire has received the support of the same number of Governments, the Office considers that the solution imposing the less extensive obligation, namely, that of requiring the introduction of compulsory old-age insurance only, should be adopted. The minimum conditions which such a scheme should fulfil for the purpose of the international Convention will be discussed later.

It is obvious that the participation in the scheme of Members who have not set up any kind of compulsory insurance scheme would be of no interest to other Members, and the replies are unanimous as to the necessity for every Member adopting the scheme to introduce compulsory insurance. Moreover, as the scheme for the maintenance of rights does not place any fresh obligations on insurance institutions, it does not appear to be strictly necessary for the definitions of the risks covered by the national laws of the various Members participating in the scheme to agree in every case.

The stipulation of strict conditions for participation in the scheme might hinder its widespread adoption, which is most desirable in the interests of migrants and their dependants.

### Minimum Conditions to be Fulfilled by Insurance Laws

(Question 47 Replies on pages 134 to 138)

This Question was designed to obtain the views of Governments as to the standard of protection to be provided by the insurance laws of the Members adopting the scheme.

Fourteen Governments in all stated their attitude to the principle that minimum conditions should be prescribed for the insurance legislation of Members participating in the scheme, six of these replies approving the principle and six opposing it

The replies of the following Governments are in the negative *Belgium, China, Luxemburg, Poland, Spain, Sweden.* The *Spanish* Government adds that the laying down of minimum conditions would conflict with the principles on which the whole scheme is based

The affirmative replies, which are in the majority, come from the Governments of the following countries . *Austria, Brazil, Bulgaria, Chile, Hungary, Italy, Netherlands, Yugoslavia.*

The Governments of *Austria* and *Chile* do not specify what minimum conditions they propose to lay down, but those of *Brazil* and *Bulgaria* suggest that the legislation of the Members should conform with the provisions of the Draft Conventions adopted in 1933 concerning invalidity insurance, old-age insurance and widows' and orphans' insurance The *Hungarian* Government recommends that the minimum conditions should be the fundamental conditions laid down in the Hungarian Act concerning invalidity, old-age and widows' and orphans' insurance for workers in industry and commerce The *Italian* Government considers that these conditions should be broadly equivalent to those of the Draft Conventions of 1933, particularly in regard to the scope of insurance, qualifying period, right to benefit and financial contributions from public funds. The special body contemplated under Question 42 might be made responsible for fixing the minimum conditions or deciding whether they are fulfilled under national legislation The Governments of the *Netherlands* and *Yugoslavia* also propose the conditions stipulated in the Draft Conventions of 1933

In accordance with the view expressed in the majority of the replies, it is proposed to include in the Draft Convention a provision laying down the minimum conditions to be fulfilled by the insurance legislation of Members participating in the scheme Nevertheless, in order to take account of the strong opposition expressed to the principle of prescribing minimum conditions, it is proposed that only those provisions of the 1933 Draft Conventions which are of essential importance for the protection of the insured persons should be prescribed. The compulsory old-age insurance schemes of each Member will have to fulfil two minimum conditions, namely, to cover all or at least the majority of workers in industrial and commercial undertakings, and secondly to fix the pensionable age at not later than 65 years

No minimum conditions need be laid down for invalidity insurance or for widows' and orphans' insurance, the introduction of which is not made compulsory for Members adopting the scheme It is suggested, with a view to striking a fair balance and in accordance with the replies of the Governments, that Members should be given power to apply only the provisions of their own law in respect of rights in course of acquisition in the case of risks which are not covered by the law of the other Member or Members concerned

The Governments were in fact also requested to state whether Members whose law covers the three risks of invalidity, old-age and death should be allowed to apply special provisions in their dealings with any other Member whose law covers only two of these risks, or only the risk of old age

The following Governments recommended that special

restrictions should be applied in the cases concerned by Members whose legislation covers all three risks. *Austria*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Spain*, *Sweden*.

The scheme for the maintenance of rights in course of acquisition will thus apply fully only in respect of risks covered by all the Members concerned in each particular case. When the risk concerned is not covered by the law of the other Member, each Member may apply only the provisions of its own law in respect of the maintenance of rights in course of acquisition This suggestion, which the Office has decided to adopt, is put forward in slightly different terms by the Governments of *Austria*, *Hungary*, *Italy*, *Luxemburg* and *Spain*.

## Equality of Treatment for Nationals of Members adopting the Scheme

(Question 48 Replies on pages 138 to 142)

It was pointed out in the course of the first discussion that the 1933 Conventions concerning invalidity, old-age and widows' and orphans' insurance established equality of treatment for nationals and foreigners in respect of admission to compulsory insurance and insurance benefits, and that if the proposed Convention respecting the maintenance of rights were ratified by States which have not ratified the 1933 Conventions, the provisions of the latter concerning equality of treatment would not operate as regards those States. Following a detailed discussion, it was decided to consult Governments as to whether the adoption of the international scheme should involve for every Member an undertaking to treat the nationals of any other Member participating in the scheme on the same footing as its own nationals as regards entry into compulsory invalidity, old-age and widows' and orphans' insurance and the benefits of such insurance. The Governments in favour of the principle of equality of treatment were also asked to suggest any restrictions that might be applied to this undertaking in regard to subsidies, supplements to or fractions of pensions payable wholly or mainly out of public funds.

Of the fifteen replies received, four are opposed to including the principle of equality of treatment in the Draft Convention, those coming from the following countries. *Brazil*, *Bulgaria*, *Chile*, *France* The Governments of *Brazil* and *Bulgaria* justify their rejection of the proposal on the ground that equality of treatment is already provided for under the Draft Conventions adopted in 1933.

The *French* Government considers that the international scheme should not place the nationals of the country concerned

and those of all other Members participating in the scheme on exactly the same footing Assimilation should be provided for only in respect of the maintenance of the rights relating to benefits provided by the contributions of the insured persons and their employers, while it should be left to special diplomatic treaties to decide as to assimilation in respect of benefits derived from State subsidies or other funds and reserved by law to the nationals of the country concerned

The remaining eleven replies are in the affirmative, and recommend that equality of treatment should be granted in respect of benefits, including subsidies, supplements to and fractions of pensions payable wholly or mainly out of public funds This opinion is held by the following countries *Austria*, *Belgium*, *China*, *Hungary*, *Italy*, *Luxemburg*, *Netherlands*, *Poland*, *Spain*, *Sweden*, *Yugoslavia* With the exception of *Sweden*, all these countries agree that equality of treatment should be granted in respect of all benefits, including subsidies, supplements to and fractions of pensions payable wholly or mainly out of public funds

The replies put forward various arguments in favour of providing for equality of treatment as between the nationals of all Members participating in the scheme, and several Governments, particularly those of the *Netherlands* and *Poland*, express the opinion that the usefulness of the whole scheme would be jeopardised by the omission of a clause to this effect.

In view of this result of the consultation, the Office considers it necessary to include in the Convention a provision under which every Member adopting the scheme would bind itself to treat the nationals of any other Member adopting the scheme on the same footing as its own nationals in respect of admission to compulsory invalidity, old-age and widows' and orphans' insurance and for the purpose of the benefits of such insurance, including subsidies, supplements to or fractions of pensions payable out of public funds Nevertheless, in order to ensure conformity with the equivalent Article providing for equality of treatment in the Draft Conventions adopted in 1933, it is proposed that full freedom of action be left to national legislation in respect of subsidies, supplements to or fractions of pensions payable out of public funds and granted exclusively to insured persons who are above a certain age when the compulsory insurance scheme comes into force.

### Effects of Denunciation

(Question 49 Replies on pages 142 to 144)

The right to pensions and other benefits awarded under the international scheme for the maintenance of rights should

be secured once and for all All the bilateral treaties respect the principle of acquired rights The international scheme to be established might well imitate their example, and this point was submitted for the consideration of Governments in accordance with the decisions taken at the first discussion

All the explicit replies received, fifteen in all, agree that it should be laid down that denunciation by a Member of the Convention establishing the international scheme should not affect the liabilities of insurance institutions in respect of claims which matured before the scheme expired Account must therefore be taken of this in framing the Draft Convention

There remains the further question of the effects of denunciation on rights in course of acquisition in respect of periods antecedent to the expiry of the scheme for the Member concerned It is obvious that once the Convention has expired no further rights may be acquired under it in respect of the totalisation of insurance periods On the other hand, however, it is essential in fairness to the insured persons that the rights in course of acquisition maintained under the Convention should not expire as a result of a denunciation of the Convention, the maintenance of these rights after the date when the Convention ceases to be in force depending on the law of each insurance institution

The Governments were therefore asked whether it should be laid down that the denunciation of the Convention by a Member shall not affect rights in course of acquisition in respect of periods antecedent to the expiry of the scheme for this Member

Thirteen replies in the affirmative were received to this Question and two in the negative *(Austria, Netherlands)*

The *Polish* Government, whose reply is in the affirmative, defines the proposed provision more closely by stating that rights in course of acquisition maintained by the application of the Convention should not expire as a result of its denunciation but should continue to be maintained in virtue of national legislation. A more extensive maintenance of rights in course of acquisition in respect of periods antecedent to the expiry of the Convention does not seem possible to this Government

The Office follows the majority of the replies in proposing that rights in course of acquisition maintained in virtue of the International Convention shall not be affected by denunciation of the Convention, their maintenance subsequent to the date on which the Convention ceases to be in force depending on the national law of the insurance institution concerned

## Relationship between International Scheme and Special Treaties

(Question 50 Replies on pages 145 to 149)

Certain States Members of the Organisation have concluded treaties between themselves to regulate the maintenance of the acquired rights and rights in course of acquisition of migrants, and it is probable that other similar treaties will be concluded in the future A decision is therefore called for in regard to the relationship between the Draft Convention establishing the general international scheme and the special treaties which have been or may be concluded between Members

Two possible views of this relationship were considered at the first discussion

1 The Convention might be of an imperative nature, all deviation from its provisions by special treaties being forbidden Members adopting the international scheme would thereby undertake not to enter into any special treaties which would be incompatible with the provisions of the international scheme, this obligation also applying retroactively to treaties concluded before the scheme came into force

2 The Convention might be of a directory nature, Members adopting the international scheme being empowered to depart from its provisions by means of special treaties, provided that these treaties make positive provision for the maintenance of rights in course of acquisition and of acquired rights, and that the conditions laid down are on the whole at least as favourable as those provided under the international scheme Special treaties concluded prior to the coming into force of the scheme would also be subject to the same proviso

Unequivocal support for the first solution, that of a Convention of an imperative nature, is expressed by the Governments of the following countries *Chile, China, Hungary, Italy, Luxemburg, Yugoslavia*

Several of these Governments explain their attitude more fully In the opinion of the *Hungarian* Government it should be laid down that the provisions of treaties concluded between States before the international scheme came into force should cease to have effect if they are less favourable to the migrants than the international scheme The *Luxemburg* Government states that treaties concluded before the coming into force of the international scheme should be revised, while the *Yugoslav* Government considers that a time limit of five years should be allowed to Members for the revision of any special treaties already in force, while

the conclusion of new treaties should be allowed only in so far as it does not affect the rights and liabilities of Members who are not parties to it, the body referred to in Question 42 being consulted by any of the parties concerned in case of doubt.

All the other replies, namely those of the Governments of *Austria*, *Belgium*, *Brazil*, *Bulgaria*, *Netherlands*, *Poland*, *Spain* and *Sweden*, suggest a more flexible provision, giving the Members participating in the scheme power to depart from the rules of the Convention by special treaties, provided that such treaties do not affect the rights and liabilities of Members who are not parties to them and make positive provision for the maintenance of rights in course of acquisition and of acquired rights under conditions not less favourable on the whole than those laid down by the international scheme. Special treaties concluded prior to the coming into force of the scheme should be revised and extended in so far as their provisions are less favourable than those laid down by the Convention.

The reply of the *French* Government is in a class by itself. In the scheme proposed by this Government the international Convention would lay down only a few fundamental rules, all other problems being reserved for special treaties between the Members. A Draft Convention on these lines, would not be capable of immediate application, since special treaties would have to be concluded by each Member with all the other Members participating in the scheme in order to settle all the questions with which the Convention itself did not deal.

In accordance with the majority of the replies the Office does not consider it necessary that the Draft Convention should forbid every deviation from the rules of the international scheme, however slight, which might be applied by two Members in their reciprocal relations. The Convention should represent a general system of common law, but the Members should be allowed to depart from it, on condition that the rights and obligations of other Members bound by the Convention were not affected, by concluding a special treaty making positive provision for the maintenance of rights in course of acquisition and of acquired rights under conditions not less favourable on the whole than those provided under the Convention. Treaties already concluded which do not afford the migrants protection which may be regarded as equivalent on the whole to that provided under the Draft Convention must be revised to conform with the provisions of the latter.

## CHAPTER III

## COMMENTARY ON THE TEXT OF A PROPOSED DRAFT CONVENTION

The proposed Draft Convention submitted to the Conference is based on the replies of Governments to the Questionnaire drawn up in accordance with the results of the first discussion at the 1934 Session

*Article 1* of the Draft Convention affirms the twofold purpose of the international scheme to be set up between the Members bound by the proposed Convention, namely, the maintenance of rights in course of acquisition and the maintenance of acquired rights under compulsory invalidity, old-age, and widows' and orphans' insurance

### Maintenance of Rights in Course of Acquisition

The part dealing with the maintenance of rights in course of acquisition provides for the totalisation of insurance periods on behalf of beneficiaries of the scheme for the maintenance of rights, and lays down rules for determining the benefit for which each institution to which the migrant was successively affiliated is liable

*Article 2* begins by defining the persons who may claim the benefit of the totalisation of insurance periods Totalisation applies to all persons, irrespective of their nationality, who have been affiliated to institutions for invalidity, old-age or widows' and orphans' insurance in two or more States Members participating in the international scheme

The same Article enumerates the periods to be totalised for the various purposes of insurance For the maintenance of rights in course of acquisition the periods comprised in totalisation are contribution periods spent with any invalidity, old-age or widow' and orphans' insurance institution of a Member participating in the scheme , periods in respect of which contributions were not payable, but during which rights are maintained in virtue of the legislation under which they were spent ; and also periods during which the migrant was in receipt of a pension or other cash benefit from another country participating in the scheme, in so far as a corresponding benefit paid under the law of the Member the institution of which is totalising would maintain rights in course of acquisition For the other purposes of insurance, and in particular for the calculation of the qualifying period, the only periods

which may be totalised are contribution periods and periods for which no contributions were payable, but which are counted for the purpose of reckoning the qualifying period under the law governing the institution which is totalising.

*Article 3* lays down the rule that each of the insurance institutions concerned shall decide under its own law alone whether, taking into account all insurance periods, the claimant fulfils the conditions giving him the right to benefit If these conditions are fulfilled, the institution determines the amount of each benefit in accordance with its own law Those benefit components which are based exclusively on the periods spent under the institution's own law must be paid in full, but those determined independently of the time spent in insurance may be reduced in the ratio of the periods counted in reckoning benefits according to the law governing the institution concerned to the total of the periods counted for the purpose of reckoning benefits according to the law of all the institutions concerned The same provisions apply to subsidies, supplements to or fractions of benefits which are wholly or mainly payable out of public funds , those components which depend on the time spent in insurance must be paid in full, while those determined independently of the time spent in insurance may be reduced *pro rata temporis.*

*Article 4* applies to migrants who have spent less than 52 contribution weeks under the invalidity, old-age, or widows' and orphans' insurance scheme of a Member adopting the international scheme The institution or institutions to which the migrant was affiliated in this State may decline to recognise liability for benefit , but such periods for which no benefit is paid by an institution or institutions which would otherwise be liable may not be taken into account for the purpose of reduction by the other institutions concerned. This provision relieves insurance institutions of the necessity of paying very small pensions without involving any injury to the migrant's rights

*Article 5* contains the protective clause guaranteeing to claimants entitled to benefit in at least two States Members adopting the scheme a total benefit equal to that to which they would have been entitled, in the absence of any international arrangements, in virtue of the insurance periods spent with a single institution Any complementary benefit due under this clause is payable by the latter institution The second paragraph lays down rules for the calculation and the distribution of liability for such complementary benefit when several institutions are liable

*Article 6* contains three optional provisions which Members may apply by agreement between themselves

The first provides that benefits may be reckoned by a method differing from that prescribed in Article 3, but giving a result which is at least equivalent on the whole to that obtained by applying Article 3, and subject to the condition that, in accordance with the protective clause, the total of the benefits granted shall never be less than the benefit payable in respect of periods spent with a single institution

The second clause gives power to the insurance institution to discharge its liability to the insured person or his dependants by paying to the institution to which this person transfers his membership the capital representing his rights in course of acquisition The exercise of this power is subject to the conclusion of appropriate agreements between the Members to which the insurance institutions concerned belong The institution thenceforward responsible must be free to accept or refuse the transfer of the capital, but if it accepts it must undertake to apply the capital for the purpose of crediting rights

The third clause authorises Members to limit the total of the benefits granted by the insurance institutions to the amount due on the basis of the totalised insurance periods from the institution governed by the most favourable law

*Article 7* allows an important facility to the beneficiaries of the scheme for the maintenance of rights in course of acquisition A claimant need only submit his claim for benefit to one of the insurance institutions to which he has been affiliated, this institution being responsible for informing any others mentioned in the claim

*Article 8* specifies the method to be applied by insurance institutions to which a claim for benefit is presented in converting a sum expressed in the currency of another country. The institution concerned must adopt the relation between the two currencies obtaining at the date of submission of the claim on the principal foreign exchange market of the Member in the currency of which the sum is expressed

*Article 9* gives power to every Member to apply its own law in respect of rights in course of acquisition in its relations with any Member whose law does not cover the risk on account of which a benefit is claimed. In order to be able to participate in the international scheme Members must have established at least a system of compulsory old-age insurance. Members whose legislation covers the three risks of invalidity, old-age, and death need not totalise insurance periods for the purpose of awarding a widow's pension, if the risk of death is not covered by the insurance scheme of the other Member or Members concerned.

## Maintenance of Acquired Rights

*Article 10* defines the beneficiaries of the arrangements for the maintenance of acquired rights Persons who have been affiliated to an insurance institution of a Member, and their dependants, irrespective of nationality, will be entitled to the entirety of the benefits to which they have acquired the right, while resident in the territory of any other Member adopting the scheme

This rule, however, is subject to an important restriction in respect of subsidies, supplements to or fractions of pensions payable wholly or mainly out of public funds These pension components may be withheld from claimants who are not nationals of a Member participating in the scheme and resident in the territory of such Member

*Article 11* prohibits the commutation, by the payment of a lump sum smaller than their capital value, of the pensions of nationals of Members who are resident in the territory of another Member adopting the scheme. The only exception allowed is in the case of pensions the monthly rate of which is inconsiderable, which may be commuted under the conditions laid down by national legislation.

*Article 12* deals with the provisions for the reduction or suspension of benefit, which are not, however, to affect benefits resulting from the international scheme.

## Mutual Assistance in Administration

*Article 14* provides that the authorities and insurance institutions of all Members adopting the scheme for the maintenance of rights shall afford each other mutual assistance to the same extent as if they were applying their own social insurance legislation

The cost of such assistance is subject to repayment, except where otherwise agreed between the Members concerned

*Article 15* provides that any advantage in respect of exemption from taxation granted by a Member participating in the scheme shall be extended to the corresponding documents submitted in connection with the application of the scheme to the authorities and institutions of any other Member

*Article 16* relates to a specially important case of mutual assistance in administration , the entrusting of the payment of benefit to the insurance institution of the beneficiary's place of residence

## Operation of International Scheme

*Article 17* defines the conditions under which Members may participate in the international scheme. It is obvious

that the participation of a Member which did not possess any kind of compulsory insurance scheme would be of no interest to other Members. The Convention therefore provides that any Member which at the date of the registration of its ratification has not yet set up, on behalf of employed persons in general, or at least of the majority of persons employed in industrial and commercial undertakings, a compulsory insurance scheme under which pensions are payable at an age not later than 65 years, shall undertake to introduce such a scheme within 12 months after the registration of its ratification

*Article 18* is based on the principle that the relation of reciprocity created between the Members adopting the scheme for the maintenance of rights entails equality of treatment for the nationals of all these Members, both in respect of entry into compulsory invalidity, old-age and widows' and orphans' insurance and of the benefits of such insurance, including subsidies, supplements to and fractions of pensions which are payable wholly or mainly out of public funds

*Article 19* provides that Members may derogate from the provisions of the Convention by special treaties This clause applies both to treaties already concluded and to those which may be concluded after the Convention comes into force for the Members concerned Such treaties, however, while not affecting the rights and liabilities of any Members who are not parties to them, must make definite provision for the maintenance of acquired rights and rights in course of acquisition under conditions at least as favourable on the whole as those provided for in the Convention

*Article 20* provides for the setting up of a Commission to assist Members in applying the international scheme, to consist of one delegate for each Member participating in the scheme and three persons appointed respectively by the Government, Employers' and Workers' groups of the Governing Body of the International Labour Office The duties of this Commission, the powers of which will be advisory, will be to make recommendations, at the request of one or more Members concerned, as to the manner in which the Convention shall be applied in the light of its principles and purpose

*Article 21* specifies the effects of the coming into force of the Convention For the purpose of its application, account must be taken of insurance periods antecedent to its coming into force The rights relating to these periods will be reviewed at the claimant's request, provided that such review does not involve the payment of arrears or the refund of benefits for the period prior to the coming into force

of the Convention Pensions withheld before the Convention came into force on account of the claimant's residence abroad must be awarded when the Convention becomes operative, and the same applies to pensions previously suspended on account of residence abroad, which must be resumed after the Convention comes into force

*Article 22* deals with the effects of the denunciation of the Convention, which will not affect the liabilities of insurance institutions in respect of claims which matured before the denunciation took effect Similarly, rights in course of acquisition which are maintained in virtue of the Convention will not lapse by reason of its denunciation Both these rules are a direct corollary of the principle of acquired rights

# PROPOSED TEXT

# PROPOSED DRAFT CONVENTION CONCERNING THE ESTABLISHMENT OF AN INTERNATIONAL SCHEME FOR THE MAINTENANCE OF RIGHTS UNDER INVALIDITY, OLD-AGE AND WIDOWS' AND ORPHANS' INSURANCE

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## Part I. — Establishment of International Scheme

### ARTICLE 1

1. There is hereby established between Members of the International Labour Organisation a scheme for the maintenance of rights in course of acquisition with and of rights acquired with compulsory invalidity, old-age and widows' and orphans' insurance institutions (hereinafter called " insurance institutions ").

2 References to ' Members " in Parts II, III, IV and V of this Convention shall be construed as including only Members of the International Labour Organisation bound by this Convention.

## Part II. — Maintenance of Rights in Course of Acquisition

### ARTICLE 2

*Totalisation of Insurance Periods*

1 The insurance periods spent by persons who have been affiliated to insurance institutions of two or more Members shall, irrespective of the nationality of such persons, be totalised by each such institution in accordance with the following rules

2 For the maintenance of rights in course of acquisition the periods to be totalised shall be .

*(a)* contribution periods ,

*(b)* periods in respect of which contributions were not payable but during which rights are maintained in virtue of the laws or regulations under which they were spent ; and

*(c)* periods during which a cash benefit has been paid under an invalidity, old-age or other social insurance scheme of another Member, in so far as a corresponding benefit would, under the laws or regulations governing the institution which is totalising, maintain rights in course of acquisition

# AVANT-PROJET DE CONVENTION CONCERNANT L'ÉTABLISSEMENT D'UN RÉGIME INTERNATIONAL DE CONSERVATION DES DROITS DANS L'ASSURANCE INVALIDITÉ-VIEILLESSE-DÉCÈS

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## Partie I — Etablissement d'un régime international

### ARTICLE PREMIER

1. Il est établi entre Membres de l'Organisation internationale du Travail un régime de conservation des droits en cours d'acquisition et des droits acquis auprès des institutions d'assurance-invalidité obligatoire, d'assurance-vieillesse obligatoire ou d'assurance-décès obligatoire (appelées dans la suite : institutions d'assurance).

2. Chaque fois que, dans les parties II, III, IV et V de la présente convention, il est fait mention des «Membres», cette expression ne vise que les Membres de l'Organisation internationale du Travail liés par la présente convention.

## Partie II. — Conservation des droits en cours d'acquisition

### ARTICLE 2

*Totalisation des périodes d'assurance*

1 Pour les personnes, quelle que soit leur nationalité, qui ont été affiliées à des institutions d'assurance de deux ou plusieurs Membres, les périodes d'assurance sont totalisées, par chacune des institutions intéressées, comme il est dit ci-après.

2. Pour le maintien des droits en cours d'acquisition, sont totalisées .

*a)* les périodes de cotisation ;

*b)* les périodes qui, sans avoir donné lieu à cotisation, maintiennent les droits selon la législation sous laquelle elles ont été accomplies ;

*c)* les périodes pendant lesquelles une prestation en espèces est servie par l'assurance-invalidité-vieillesse ou par une autre branche d'assurance sociale de tout autre Membre, pour autant qu'une prestation correspondante maintiendrait les droits en cours d'acquisition, selon la législation propre de l'institution qui procède à la totalisation.

3. For the purposes of

(i) reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special advantages (guaranteed minima),

(ii) the recovery of rights;

(iii) the right to enter voluntary insurance; and

(iv) the right to medical treatment and care,

the periods to be totalised shall be.

*(a)* contribution periods, and

*(b)* periods in respect of which contributions were not payable but which are counted for the purpose of reckoning the qualifying period under the laws or regulations governing the institution which is totalising.

4 Provided that where under the laws or regulations of a Member only periods spent in an occupation covered by a special scheme are to be taken into account for the purpose of determining whether a claimant is entitled to certain advantages the periods to be totalised for the purposes set forth in paragraph 3 shall be restricted to periods spent under the corresponding special insurance scheme of other Members or, in respect of Members with no special insurance scheme for the occupation concerned, to periods spent in that occupation under the insurance scheme applicable thereto.

5 Contribution periods and assimilated periods spent simultaneously in two or more Members shall be reckoned once only for the purpose of totalisation

## Article 3

*Calculation of Benefit Liability of each Insurance Institution*

1 Each insurance institution from which on the basis of the totalised insurance periods the claimant is entitled to benefit shall calculate the amount of each such benefit according to the laws and regulations governing the said institution

2 Benefits or benefit components which vary with the time spent in insurance and are determined with sole regard to the periods spent under the laws and regulations governing the institution by which they are payable shall be payable without reduction.

3. Benefits or benefit components which are determined independently of the time spent in insurance and consist of a fixed sum, a percentage of the average remuneration taken

3. En vue de déterminer :

i) le calcul du stage (délai minimum d'assujettissement) ou du nombre de cotisations exigé pour avoir droit aux avantages particuliers (minima garantis);

ii) le recouvrement des droits ;

iii) le droit à l'assurance facultative ;

iv) le droit aux traitements et soins médicaux ;

sont totalisées :

*a)* les périodes de cotisation ;

*b)* les périodes qui, sans avoir donné lieu à cotisation, entrent en compte pour le calcul du stage, selon la législation propre de l'institution qui procède à la totalisation

4. Toutefois, lorsque la législation de l'un des Membres subordonne certains avantages à la condition que les périodes doivent avoir été accomplies dans une profession soumise à un régime d'assurance spécial, ne sont totalisées, aux effets indiqués au paragraphe 3, que les périodes accomplies sous le régime d'assurance spécial correspondant de l'autre ou des autres Membres. Si, dans l'un des Membres, il n'existe pas, pour la profession, de régime d'assurance spécial, sont totalisées les périodes accomplies dans ladite profession, sous le régime d'assurance qui lui est applicable

5. Les périodes de cotisation et les périodes assimilées, accomplies simultanément dans deux ou plusieurs Membres, ne comptent qu'une fois en vue de la totalisation.

## Article 3

*Calcul de la prestation à la charge de chaque institution d'assurance*

1. Chaque institution d'assurance au regard de laquelle le requérant remplit les conditions d'attribution, compte tenu de la totalité des périodes d'assurance, calcule d'après la législation qui lui est applicable le montant de chaque prestation.

2 Les prestations ou éléments de prestations variables avec le temps passé en assurance, et qui sont fixés exclusivement en fonction des périodes accomplies sous la législation propre de l'institution, ne subissent pas de réduction.

3. Les prestations ou éléments de prestations fixés indépendamment du temps passé en assurance et consistant en une somme fixe ou en un pourcentage soit du salaire assuré

into account for insurance purposes, or a percentage of the average contribution, may be reduced in the ratio of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing the institution concerned to the total of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing all the institutions concerned.

4 The provisions of paragraphs 2 and 3 shall apply to any subsidy or supplement to or fraction of a pension which is payable wholly or mainly out of public funds.

### Article 4

*Non-application of Reduction in respect of Short Periods*

In cases in which the total of the insurance periods spent with the insurance institutions of a Member does not amount to 52 contribution weeks, the institution or institutions with which they were spent may decline to recognise any liability for benefit Periods in respect of which liability for benefit has been so declined shall not be taken into account by any of the other institutions concerned when making the reduction permitted by Article 3, paragraph 3.

### Article 5

*Protective Clause*

1. If a claimant who is entitled to benefits from the insurance institutions of at least two Members would but for this Convention be entitled to receive from any such institution in respect of periods spent with it a benefit greater than the total of the benefits to which he is entitled under Article 3, he shall be entitled to receive from that institution a complementary benefit equal to the difference

2. Where a complementary benefit is due from several institutions, the amount of such benefit due from these institutions shall be the highest such amount due from any one of them and the liability for this amount shall be shared among them in proportion to the complementary benefits which would have been due from each individually

### Article 6

*Optional Provisions*

Provision may be made by agreement between the Members concerned for :

*(a)* the reckoning of benefits by a method which differs from that prescribed in Article 3 but gives a result

moyen, soit de la cotisation moyenne, peuvent être réduits au prorata de la durée des périodes entrant en compte pour le calcul des prestations d'après la législation de l'institution, par rapport à la durée totale des périodes entrant en compte pour le calcul des prestations d'après les législations de toutes les institutions intéressées

4. Les dispositions des paragraphes 2 et 3 s'appliquent aux subsides, majorations ou fractions de pensions payables exclusivement ou principalement sur les fonds publics

ARTICLE 4

*Non-application de la réduction au titre des périodes minima*

Lorsque les périodes d'assurance accomplies auprès des institutions d'assurance d'un Membre n'atteignent pas, dans l'ensemble, cinquante-deux semaines de cotisation, elles peuvent ne pas donner lieu à prestations de la part de l'institution ou des institutions auprès desquelles elles ont été accomplies Les périodes qui n'ont pas donné lieu à prestations n'impliquent de réduction, au sens de l'article 3, paragraphe 3, de la part d'aucune des autres institutions intéressées.

ARTICLE 5

*Clause protectrice*

1. Si le bénéficiaire admis à prestations par les institutions d'assurance d'au moins deux Membres peut, à défaut de la présente convention, prétendre pour les seules périodes accomplies auprès d'une même institution, à une prestation supérieure au total des prestations résultant de l'application de l'article 3, il a droit, de la part de cette institution, à un complément égal à la différence.

2. Lorsqu'un complément est dû par plusieurs institutions, il est calculé d'après le chiffre du complément le plus élevé qui serait dû par l'une de ces institutions, la charge de ce complément étant répartie entre celles-ci proportionnellement au complément que chacune d'elles aurait dû servir.

ARTICLE 6

*Dispositions facultatives*

Il pourra être prévu, par accord entre les Membres intéressés .

*a)* un mode de calcul des prestations qui diffère des règles de l'article 3, mais qui donne un résultat au moins

which is at least equivalent on the whole to that given by applying the said article, subject to the total of the benefits payable never being less than the highest benefit payable by any one insurance institution in respect of periods spent with it ,

*(b)* enabling an insurance institution of one Member to discharge its liability to the insured person and his dependants by paying to the insurance institution of another Member to which he is at the time affiliated the capital representing the rights in course of acquisition by him at the date of his departure, subject to the latter institution consenting thereto and undertaking to apply the capital for the purpose of crediting rights ;

*(c)* limiting the total of the benefits granted by the insurance institutions of Members to the amount due on the basis of the totalised insurance periods from the institution governed by the most favourable laws and regulations

ARTICLE 7

*Submission of Claims for Benefit*

A claimant need submit his claim for benefit to only one of the insurance institutions to which he has been affiliated, in particular to that of his place of residence. This institution shall then inform the other institutions mentioned in the claim

ARTICLE 8

*Rate of Exchange*

For the purpose of converting sums expressed in the currency of another Member, insurance institutions shall, when passing upon claims for benefit, adopt the relation between the two currencies which, at the date of submission of the claim, obtained on the principal foreign exchange market of the Member in the currency of which the sum is expressed.

ARTICLE 9

*Power of Members to apply their own Laws and Regulations*

Any Member may decline to apply the provisions of this Part of this Convention in its relations with a Member the laws and regulations of which do not cover the risk in respect of which a benefit is claimed

équivalent, dans l'ensemble, à celui qui serait obtenu par l'application dudit article, pourvu qu'il soit garanti, dans chaque cas, un total de prestations égal à la prestation la plus élevée qui résulterait des seules périodes accomplies auprès d'une même institution d'assurance ;

*b)* la faculté, pour l'institution d'assurance de l'un des Membres, de se libérer envers l'assuré et ses ayants droit, par le versement à l'institution de l'autre Membre à laquelle l'assuré est désormais affilié, du capital représentatif des droits en cours d'acquisition au moment du départ de l'assuré, si toutefois cette dernière institution y consent et s'engage à affecter le capital au rachat des droits ;

*c)* la limitation du total des prestations accordées par les institutions d'assurance des Membres au montant de la prestation qui serait due, sur la base de la totalité des périodes entrant en compte, par l'institution dont la législation est la plus favorable

ARTICLE 7

*Présentation des demandes de prestations*

Le requérant peut ne présenter sa demande de prestations qu'à une seule des institutions d'assurance auxquelles il a été affilié, à celle notamment du lieu de sa résidence. Cette institution saisit les autres institutions indiquées dans la demande

ARTICLE 8

*Cours du change*

Pour convertir une somme exprimée dans la monnaie d'un autre Membre, l'institution d'assurance, saisie d'une demande de prestations, adopte le rapport existant entre les deux monnaies, le jour de la présentation de la demande, à la Bourse principale du Membre dans la monnaie duquel la somme est exprimée

ARTICLE 9

*Faculté pour les Membres de s'en tenir à leur législation*

Tout Membre peut ne pas appliquer les dispositions de cette partie de la présente convention dans ses rapports avec un Membre dont la législation ne couvre pas le risque au titre duquel une prestation est demandée.

## Part III. — Maintenance of Acquired Rights

### Article 10

*Rights to be Maintained*

1. Persons who have been affiliated to an insurance institution of a Member and their dependants shall, while resident in the territory of any other Member, be entitled, irrespective of nationality, to the entirety of the benefits the right to which has been acquired in virtue of their insurance:

2. Provided that any subsidy or supplement to or fraction of a pension which is payable wholly or mainly out of public funds may be withheld from persons who are not nationals of a Member.

### Article 11

*Restriction on Commutation of Pensions*

1. Pensions payable to nationals of Members who are resident in the territory of a Member shall not be commuted for lump sums smaller than their capital value:

2 Provided that the insurance institution liable for benefit may commute pensions the monthly value of which is inconsiderable by the payment of a lump sum calculated according to the laws and regulations governing the said institution.

### Article 12

*Provision for Reduction or Suspension*

The provisions of the laws or regulations of a Member permitting the reduction or suspension of benefit if the person concerned has concurrent rights to other social insurance benefits or is in employment involving compulsory insurance may be invoked against beneficiaries under the international scheme in respect of benefits, other than benefits due under this Convention, paid by an insurance institution or any other social insurance fund established in the territory of another Member or in respect of employment in such territory.

### Article 13

*Medium of Payment*

An insurance institution liable for benefit in virtue of the international scheme may discharge in the currency of its own country its liability to all persons entitled to benefit.

## Partie III. — Conservation des droits acquis

### Article 10

*Objet de la conservation*

1. Les personnes qui ont été affiliées à une institution d'assurance de l'un des Membres, ainsi que leurs ayants droit, bénéficient, quelle que soit leur nationalité, tant qu'ils résident sur le territoire de tout autre Membre, de l'intégralité des prestations acquises en vertu de leur assurance.

2. Toutefois, les subsides, majorations ou fractions de pensions, payables exclusivement ou principalement sur les fonds publics, peuvent ne pas être versés lorsqu'il s'agit de personnes qui ne sont pas des ressortissants d'un Membre

### Article 11

*Limitation du règlement en capital*

1 Ne peuvent être rachetées, par le versement d'une somme inférieure à leur capital constitutif, les pensions des ressortissants des Membres, tant qu'ils résident sur le territoire d'un Membre.

2 Toutefois, l'institution d'assurance débitrice peut racheter, moyennant paiement d'une somme déterminée par la législation qui lui est applicable, les pensions dont le montant mensuel est de faible importance

### Article 12

*Clauses de réduction ou de suspension*

Les clauses de réduction ou de suspension prévues par la législation d'un Membre, en cas de cumul avec d'autres prestations d'assurance sociale ou du fait de l'exercice d'un emploi impliquant l'obligation d'assurance, sont opposables aux bénéficiaires du régime international, même au titre des prestations servies par une institution ou toute autre caisse d'assurance établie ou d'un emploi exercé sur le territoire de tout autre Membre ; toutefois, les prestations résultant de la présente convention ne doivent pas être affectées

### Article 13

*Mode de libération*

L'institution d'assurance débitrice des prestations, en application du régime international, peut se libérer dans la monnaie de son pays envers les titulaires de prestations.

## Part IV. — Mutual Assistance in Administration

### Article 14

*Investigations*

1. The authorities and insurance institutions of each Member shall afford assistance to those of other Members to the same extent as if they were applying their own laws and regulations relating to social insurance, and more particularly shall, at the request of an institution of any Member, carry out the investigations and medical examinations necessary to determine whether the persons in receipt of benefits for which the latter institution is liable satisfy the conditions for entitlement to such benefits.

2. In so far as the Members concerned do not otherwise agree the expenses to be repaid for assistance so afforded shall be an amount determined according to the scale of charges of the institution or authority which has afforded assistance or, in the absence of such a scale, the expenditure incurred

### Article 15

*Exemption from Fees*

Any exemption from fees granted by the laws or regulations of a Member in respect of documents submitted to its authorities or insurance institutions shall be extended to the corresponding documents submitted in connection with the application of the international scheme to the authorities and insurance institutions of any other Member.

### Article 16

*Payment of Benefits through the Institution of the Beneficiary's Place of Residence*

With the consent of the competent central authorities of the Members concerned, an insurance institution liable for benefits to a beneficiary resident in the territory of another Member may, on terms agreed between the two institutions, entrust the insurance institution of the place of residence of the beneficiary with the payment of such benefits on its behalf

## Part V. — Operation of International Scheme

### Article 17

*Undertaking by Members who have not yet set up Compulsory Old-age Insurance*

Every Member which, at the date of the registration of its ratification of this Convention, has not set up, on behalf of employed persons in general or at least on behalf of the

## Partie IV. — Entr'aide administrative

### Article 14

*Vérifications et enquêtes*

1 Les autorités ainsi que les institutions d'assurance des Membres se prêtent mutuellement leurs bons offices, dans la même mesure que s'il s'agissait de l'application de leur propre législation d'assurance sociale. Elles procèdent notamment aux vérifications et enquêtes ainsi qu'aux expertises médicales nécessaires en vue d'établir, sur demande d'une institution de tout autre Membre, si les bénéficiaires de prestations à la charge de cette institution remplissent les conditions y donnant droit

2 Tant que les Membres intéressés n'en conviennent pas autrement, les frais de l'entr'aide à rembourser sont déterminés par le tarif de l'institution ou autorité qui a prêté ses bons offices, à défaut de tarif, les dépenses effectives sont à rembourser

### Article 15

*Exemptions de taxes*

Le bénéfice des exemptions de taxes, prévu par la législation de l'un des Membres pour les pièces à produire aux autorités ou institutions d'assurance, est étendu aux pièces correspondantes à produire, en application du régime international, aux autorités ou institutions d'assurance de tout autre Membre

### Article 16

*Prise en charge du service des prestations par l'institution du lieu de résidence du bénéficiaire*

Avec l'assentiment des autorités centrales compétentes des Membres intéressés, l'institution d'assurance débitrice des prestations peut, lorsque le bénéficiaire réside sur le territoire d'un autre Membre, charger du service des prestations l'institution d'assurance compétente selon le lieu de résidence du bénéficiaire, dans les conditions fixées par entente avec elle

## Partie V. — Effets du régime international

### Article 17

*Engagement pour les Membres n'ayant pas encore institué l'assurance-vieillesse obligatoire*

Tout Membre qui, à la date d'enregistrement de sa ratification de la présente convention, n'aurait pas encore institué, pour l'ensemble des salariés ou, tout au moins, pour la plus

majority of persons employed in industrial and commercial undertakings, a compulsory insurance scheme under which pensions are payable at an age not later than sixty-five years, undertakes to set up such a scheme within twelve months after the registration of its ratification

ARTICLE 18

*Equality of Treatment for Nationals of Members adopting the International Scheme*

1. Each Member shall treat the nationals of other Members on the same footing as its own nationals for the purpose of entering compulsory insurance and for the purpose of the benefits of such insurance including any subsidy or supplement to or fraction of a pension which is payable wholly or mainly out of public funds

2. Provided that any Member may restrict to its own nationals the right to any subsidy or supplement to or fraction of a pension which is payable out of public funds and granted solely to insured persons who have exceeded a prescribed age at the date when the laws or regulations providing for compulsory insurance come into force.

ARTICLE 19

*Derogation by Means of Special Treaty*

The provisions of this Convention may be derogated from by treaties between Members which do not affect the rights and duties of Members not parties to the treaty and which make definite provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favourable on the whole as those provided for in this Convention

ARTICLE 20

*Body for the Purpose of assisting Members in applying the International Scheme*

1. For the purpose of assisting Members in applying the international scheme there is hereby established in connection with the International Labour Office a Commission consisting of one delegate for each Member together with three persons appointed respectively by the Government, Employers' and Workers' groups of the Governing Body of the Office The Commission shall regulate its own procedure.

2. At the request of one or more Members concerned, the Commission, which shall be guided by the principles and purpose of this Convention, shall make recommendations as to the manner in which it shall be applied

grande partie des salariés des entreprises industrielles ou commerciales, une assurance obligatoire donnant droit à pension à soixante-cinq ans au plus tard, s'engage à introduire une telle assurance dans les douze mois suivant l'enregistrement de sa ratification

ARTICLE 18

*Egalité de traitement des ressortissants des Membres adhérant au régime international*

1. Tout Membre assimile à ses propres nationaux les ressortissants de tout autre Membre, tant pour l'admission à l'assurance obligatoire que pour les prestations de cette assurance, y compris les subsides, majorations ou fractions de pensions payables exclusivement ou principalement sur les fonds publics

2. Toutefois, tout Membre peut réserver à ses nationaux le bénéfice des subsides, majorations ou fractions de pensions payables sur les fonds publics et attribuables exclusivement aux assurés ayant dépassé un certain âge au moment de la mise en vigueur de la législation d'assurance obligatoire

ARTICLE 19

*Dérogation par voie de traité particulier*

Les Membres peuvent déroger à la présente convention par voie de traité particulier, sans affecter les droits et obligations des Membres étrangers au traité, et sous réserve de régler d'une manière positive la conservation des droits en cours d'acquisition et des droits acquis, et cela dans des conditions, dans l'ensemble, au moins aussi favorables que celles prévues par la présente convention.

ARTICLE 20

*Organe appelé à assister les Membres dans l'application du régime international*

1. Pour assister les Membres dans l'application du régime international, il est créé, auprès du Bureau international du Travail, une Commission composée d'un délégué par Membre ainsi que de trois personnes désignées respectivement par chacun des groupes gouvernemental, patronal et ouvrier du Conseil d'administration du Bureau. La Commission établit son règlement.

2 Sur demande d'un ou de plusieurs Membres intéressés, la Commission recommande, en s'inspirant des principes et du but de la présente convention, les modalités d'application de celle-ci.

ARTICLE 21

*Insurance Periods Prior to the Entry into Force of the Convention*

1 Where, prior to the coming into force of this Convention, a pension has not been awarded or the payment of a pension has been suspended on account of the residence abroad of the person concerned, the pension shall be awarded or the payment of the pension resumed in pursuance of the Convention as from the date of the coming into force thereof.

2 In applying this Convention account shall be taken of insurance periods prior to its coming into force

3 At the request of the person concerned claims settled before the coming into force of this Convention and claims susceptible of revival or settlement in pursuance thereof shall, unless they have been settled by the payment of a lump sum, be reviewed. Review shall not involve the payment of arrears of, or the refund of, benefits for the period prior to the coming into force of the Convention.

ARTICLE 22

*Effect of Denunciation*

1. The denunciation of this Convention by a Member shall not affect the liabilities of its insurance institutions in respect of claims which matured before the denunciation took effect

2 Rights in course of acquisition which are maintained in pursuance of this Convention shall not lapse by reason of the denunciation thereof . their further maintenance during the period subsequent to the date on which the Convention ceases to be in force shall be regulated by the laws and regulations governing the institutions concerned.

## Article 21

*Périodes d'assurance antérieures à l'entrée en vigueur de la convention*

1. Les pensions non liquidées ou suspendues antérieurement à l'entrée en vigueur de la présente convention, en raison de la résidence des intéressés à l'étranger, doivent être liquidées ou le service de telles pensions repris en application de la convention, et cela à partir de son entrée en vigueur

2 Pour l'application de la présente convention, il doit être tenu compte des périodes d'assurance antérieures à son entrée en vigueur

3 Les droits liquidés antérieurement à l'entrée en vigueur de la convention et les droits à rétablir ou à liquider en vertu de la convention doivent être revisés sur demande de l'intéressé, à moins que ces droits n'aient fait l'objet d'un règlement en capital La revision ne donne lieu au paiement d'aucun rappel ou remboursement d'arrérages pour la période antérieure à l'entrée en vigueur de la convention

## Article 22

*Effets d'une dénonciation éventuelle*

1. La dénonciation par un Membre de la présente convention n'affectera pas les obligations des institutions d'assurance qui relèvent de ce Membre, tant que ces obligations proviennent de risques réalisés avant que la dénonciation ait pris effet.

2 Les droits en cours d'acquisition, maintenus en vertu de la présente convention, ne s'éteindront pas par l'effet de sa dénonciation, leur maintien ultérieur sera déterminé, pour la période postérieure à la date à laquelle la convention cessera d'être en vigueur, par la législation propre de l'institution intéressée

even though they are not contribution periods, are recognised by the law of a country and are counted for the purpose of calculating benefits paid under that law, they should logically be included in the total on which apportionment is based

It has already been pointed out that the distinction drawn in paragraphs *(a)* and *(b)* of Question 12 does not yield very accurate results, or rather, while it holds good in the more usual cases, does not apply equally well in all Apart from the fact that the system itself is empirical, it is worth noting that if in principle migrants are not to be treated better than persons who remain in the same insurance, the rules suggested in Question 12 might, under some legislations, lead to errors

Among these legislations, some provide for payment of benefit not on the basis of a fixed component or a component assimilated to a fixed one, but under a scheme in which the coefficients of reduction, which are applied to contributions for the purpose of calculating benefit, vary according to the length of the period in respect of which contributions have been paid In other words, for an initial period or number and amount of contributions, a given coefficient of reduction is applied in the calculation of pension, for a second period or amount the coefficient is smaller and so on

It has been alleged that, in this particular instance, which occurs under general and special schemes, the fixed component may be said to be that which is yielded by applying the difference between the lowest coefficient and the higher preceding coefficients, but this does not seem right, since the result yielded by the difference described varies according as the periods, to which the higher coefficients relate, are complete or partial periods, and the amount is less if the periods have not been completed.

Another type of legislation makes provision for a component which varies with time, and for a further component which may be considered as fixed and which is proportionate to the yearly average contribution paid during the period of insurance. This is, as a rule, taken to be the full calendar period from the date of the first insurance contribution to the date at which pension is paid Here again the second component cannot properly be treated as independent of time, since it is affected not only by the length of the insurance period, but also by any interruptions which may have occurred and varies inversely with these In the case of migrants, not only should the insurance period spent under the law of the institution be taken into account, but also the contribution periods, assimilated periods and non-contribution periods spent under other laws, since these affect the average and consequently the basic amount

The two types of benefit examined suggest the expediency of altering the general solution contemplated in Question 12 and of substituting for it some other solution which would be more applicable to all cases and which might be expressed as follows :

" Each institution shall take into account all the contribution periods, or assimilated periods, spent in the insurance of all the institutions concerned, on the assumption that the contribution paid during the periods recognised by the other institutions was the average yearly contribution paid during the periods spent in its own insurance, and shall determine the amount of the benefit in

accordance with its own law. The share of benefit for which each institution shall be liable shall be determined by the proportion of the period spent in its own insurance to the total of the insurance periods

The same procedure shall be applied when benefits are calculated on the basis of average or final wages, such wages being substituted for the yearly average contribution "

If the various legislations at present in force are examined, it will be seen that this solution is equally applicable in all cases. those in which the only benefit paid varies with time, those in which the only benefit paid is calculated by means of a fixed ratio, and those in which benefits include a fixed and a variable component

LUXEMBURG

12 The rules for the calculation of benefit indicated under *(a)* and *(b) (i)* should be adopted

13 No reply is given.

NETHERLANDS

12 The Government cannot agree to the rules proposed In order to avoid any possible doubt it may be pointed out, in connection with the phrase " having regard only to periods counted ", that under the Netherlands invalidity insurance legislation the pension is calculated with regard both to the contributions paid and to the duration of insurance Furthermore, the legislation is based on the principle of " Once insured, always insured ". Consequently, in the calculation of the pension of a worker by or in respect of whom contributions have been paid only for a very short period, account is taken of the total duration of insurance, e g in the case of a worker for whom contributions have been paid in the Netherlands from his 30th to his 35th year and who claims a pension on attaining his 65th year, account is taken of the total duration of his insurance, that is, from his 30th to 65th year No derogation can be made from this rule

In this connection also the Government desires to point out that under Netherlands legislation no person can be admitted into insurance after he has attained the age of 35 years In view of this provision of Netherlands legislation the scheme under consideration would be of advantage only to foreign workers entering into insurance in the Netherlands before reaching the age of 35 years There is a special provision on this point in the Belgium-Netherlands Treaty (Article 5) A provision of this kind can well be included in a bilateral treaty, but not in a scheme such as is now under consideration This is a further instance of the difficulties mentioned above in the " Preliminary observation " on page 16

*(b)* The Netherlands legislation makes no provision for calculation on this basis The question whether solution *(i)* or solution *(ii)* would be preferable depends upon the financial basis of the legislation

13 The rules suggested in Question 12 *(a)* and *(b)* appear to be sufficiently explicit